122-457

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 296.

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

CATHERINE L. EDWARDS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 15, 1884.

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1 Supreme Court, County of Ontario.

CATHERINE L. EDWARDS

against

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the county of Ontario.

Dated this twenty-eighth day of May, 1883.

COGSWELL, BENTLEY & COGSWELL,
Plaintiff's Attorneys.

Office address: 16, 18, 20, & 22 Powers Block. P. O. address: Box 644, Rochester, New York.

2 Supreme Court, Ontario County.

CATHERINE L. EDWARDS

against

THE TRAVELERS' INSURANCE COMPANY.

The plaintiff in this action, for complaint against the defendant, says upon information and belief—

That the defendant is a foreign corporation created under and by virtue of laws of the State of Connecticut for the purpose of effecting insurance upon lives.

That on the 20th day of February, 1882, the defendant, in consideration of the annual premium of one hundred and ninety-eight dollars and fifty cents then paid and thereafter to be paid to it on or before the 20th day of February in each year by Frank Edwards during the continuance of said policy and of the warranties made to it in a certain application for insurance by Frank Edwards, the insured and the brother of this plaintiff, did insure the life of said Edwards in the sum of five thousand ($5,000) dollars, and did promise and agree to pay the plaintiff herein, within ninety days after due notice and satisfactory evidence of the death of said Edwards, the said sum of five thousand dollars.

That said Frank Edwards died on the 19th day June, 1882, and that due notice of the death of said Edwards was forthwith given to the said defendant and satisfactory evidence thereof fur-
3 nished to said defendant on or before the 12th day of July, 1882, but that the said defendant, although often requested, has not paid to said plaintiff the whole or any part of the said five thousand dollars.

Wherefore the plaintiff demands judgment in the sum of five thousand dollars, with interest from the 9th day of October, 1882, besides costs.

COGSWELL, BENTLEY & COGSWELL,
Plaintiff's Attorneys, 18 *Powers Block, Rochester, N. Y.*

STATE OF NEW YORK, }
County of Monroe, } *ss:*

Catherine L. Edwards, being duly sworn, says: I am the plaintiff herein; the foregoing complaint is true of my own knowledge, except those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

CATHERINE L. EDWARDS.

Sworn to before me July 3rd, 1883.

JOHN A. C. WRIGHT,
Notary Public.

4 *Notice of Retainer.*

Supreme Court.

CATHERINE L. EDWARDS
against
THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.

SIR: I have been retained by and appear herein for the defendant above named and demand that the plaintiff's complaint herein be served on me at my office in the village of Canandaigua, N. Y.

Dated 2d June, 1883.

HENRY M. FIELD,
Attorney for Defendant.

Office & P. O. address: Canandaigua, N. Y.

To Cogswell, Bentley & Cogswell, attorneys for plaintiff.

(By mail, 2d June, 1883. H. M. F.)

5 Supreme Court, County of Ontario.

CATHERINE L. EDWARDS, Plaintiff,
against
THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.,
Defendant.

The defendant in the above-entitled action, for its answer and defence to the complaint of the plaintiff therein, now comes and respectfully states and shows to this court for its first separate answer and defence:

I. The defendant, The Travelers' Insurance Company, admits that it is a foreign corporation created under and by virtue of the laws of the State of Connecticut for the purpose of effecting insurance on lives and for the purpose of making and effecting contracts of insurance other than on lives.

II. That this defendant admits that on the 20th day of February, 1882, it did insure the life of Frank Edwards, the brother of plaintiff, in the sum of five thousand dollars, and did promise and agree to pay to said plaintiff the said sum of five thousand dollars at the time and in the manner and subject to the terms and conditions as are contained in the contract made with said plaintiff and with said Frank Edwards on the 20th day of February, 1882, as will more fully appear by the contract of insurance, and which this defendant begs leave to refer to as a part of this answer the same as if more fully set out herein.

6 III. That this defendant admits that the said Frank Edwards, whose life was so insured by the defendant, died on the 19th day of June, 1882.

IV. That this defendant denies each and every allegation contained in the complaint of plaintiff herein, save and except so much thereof only as is hereinbefore admitted.

Second separate answer and defence.

The defendant herein, for a second separate answer and defence to the complaint of the plaintiff, referring to and adopting the several admissions contained in the first separate answer and defence herein as a part of this separate answer, further states and shows to this court:

That the policy of insurance in the said complaint mentioned (and which policy is made a part of this separate answer and defence the same as if more fully set out herein) was made, issued, delivered by this defendant and accepted by the insured and by the plaintiff in consideration of the express agreement and condition (among others) hereinafter more particularly set out herein, as well as of the annual premium paid and to be paid by the insured, and which said agreement was and is as follows:

"Eighth. That in the event of the death of the person insured then the party assured, or his or her legal representatives, shall give immediate notice in writing to the company at Hartford, Conn., stating the time, place, and cause of death, and shall within seven months thereafter, by direct and reliable evidence, furnish

7 the company with proofs of the same, giving full particulars, without fraud or concealment of any kind; and it is further agreed that the disappearance or long-continued absence of the person insured, unheard of, shall not be regarded as evidence of death or any right to receive under this policy until the full term of his life expectancy under the American experience table of mortality shall have expired. It is also agreed that no suit or proceeding at law or in equity shall be brought to recover any sum insured under this policy unless the same is commenced within one year from the time the right of action accrues."

And this defendant further alleges that this plaintiff has not performed the terms of this said eighth condition, in this, that this plaintiff did not give to this defendant, at Hartford, Conn., or elsewhere, immediate notice in writing of the death of the said insured,

and that this defendant did not receive from said plaintiff notice of the death of the said Frank Edwards, who was the insured in said policy, until the 10th day of February, 1883, and that this plaintiff did not, within seven months after the 19th of June, 1882, give notice in writing to this defendant, at Hartford, Conn., or elsewhere, nor in the manner and form as required in the said eighth condition contained in said contract of insurance, and has not delivered to or furnished the defendant with proofs of the death of said Frank Edwards, with full particulars, but, on the contrary the said plaintiff, although requested by said defendant, refused to furnish full particulars of the cause of death of said Frank Edwards
8 and has kept concealed from this defendant the true and real cause of the death of the said Frank Edwards and has kept concealed full particulars in regard thereto.

And this defendant alleges that, by reason of the premises, this plaintiff has not kept or performed the said "eighth condition," and by reason thereof this defendant is not now indebted to the said plaintiff in any sum whatever and is not liable upon said contract of insurance to the said plaintiff.

Third separate answer and defence.

And this defendant, further answering the complaint of plaintiff, states and shows to this court, upon information and belief, that the defendant herein, for a third separate answer and defence to said complaint, and restating and adopting the several admissions contained in the first separate answer and defence as a part of this separate answer and defence, further states and shows to this court, upon information and belief—

1. That the policy of insurance in the said complaint mentioned (and which policy of insurance is made a part of this separate answer and defence the same as if more fully set out herein) was made, issued, and delivered by the defendant and accepted by the insured and by the plaintiff in consideration of certain express conditions and agreements (among others) hereinafter more particularly referred to, as well as of the annual premium paid and to be paid by the insured, and one of which said agreements and conditions, *is* designated as number "second," was and is in part as follows:
9 Second. That in case the said insured shall die by suicide, whether the act be voluntary or involuntary, felonious or otherwise, or whether the insured be sane or insane at the time of the act, then this policy shall be null and void and of no effect, except in the case provided for by the sixth condition of this policy, and which said above condition and agreement is made a part of this separate express condition and agreement, numbered and designated in said policy of insurance as second.

The defendant further states and shows that, although the said policy of insurance was issued by the defendant and accepted by the insured and this plaintiff upon the express condition and agreement above mentioned, yet the said insured, the said Frank Edwards, and the said plaintiff did not and have not kept and per-

formed the condition and agreement above mentioned, but did and have wholly failed to keep and perform the same, and have made default in this, that is to say:

That the said Frank Edwards, at the time mentioned in the said complaint, and in the city of Boston, in the State of Massachusetts, died by his own hand and act, and that the said Frank Edwards did then and there commit suicide by taking voluntarily a quantity of cyanide of potassium, and that his death was then and there caused by ingestion of cyanide of potassium or of some other poison of a like nature.

That this defendant further states and shows that by reason
10 of the premises the policy of insurance mentioned in said complaint became null and void and of no effect, save and except as is provided in the sixth condition of the said policy, and which said condition defendant makes a part of this separate answer the same as if more fully set out herein.

Wherefore the defendant now comes and asks that the complaint of the plaintiff herein be dismissed with costs.

HENRY M. FIELD,
Attorney for Defendant, Canandaigua, New York.

STATE OF CONNECTICUT, }
County of Hartford, City of Hartford, } *ss:*

I, James G. Batterson, of the State, county, and city aforesaid, being duly sworn, do depose and say that I reside in the State, county, and city aforesaid; I am the president of the Travelers' Insurance Company of Hartford, Conn., the defendant in the within entitled action, and have been for over one year last past; that *he is* sixty years of age and *is* engaged in the business of insurance in the city of Hartford aforesaid. I have read the foregoing answer as made by the defendant and know the contents thereof; and I further say that the said answer is true to the knowledge of this deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters *he* believes it to be true.

JAMES G. BATTERSON.

Subscribed and sworn to before me on this 26th day of July, 1883.

WALTER G. COWLES,
Notary Public.

11 STATE OF CONNECTICUT, }
County of Hartford, City of Hartford, } *ss:*

I, C. W. Johnson, do hereby certify that I am the clerk of the supreme court of said county; that Walter G. Cowles, Esq., the notary public before whom the foregoing and annexed affidavit of James G. Batterson was taken and sworn to, resides, and did at the date of the taking of said affidavit reside, in said county; that said Walter G. Cowles was at the time of the taking of said affidavit a notary public duly authorized by the laws of the State of Connecticut to take the same and to take and certify the acknowledgments and

proof of deeds, and that I am well acquainted with the handwriting of said Cowles, and verily believe that the signature of said Cowles to said affidavit and to the jurat and certificate of the taking thereof is genuine; that the foregoing and annexed oath and affidavit was and is taken in all respects as required by the laws of said State of Connecticut.

In witness whereof I have hereunto set my hand and affixed my official seal on this 26th day of July, A. D. 1883, at Hartford, Connecticut.

[SEAL.] C. W. JOHNSON,
Clerk of the Superior Court of the County of Hartford.

Endorsed as follows: Supreme court. Catherine L. Edwards *vs.* The Travelers' Ins. Co. of Hartford, Conn. Summons, com-
12 plaint, and answer. Notice of retainer. H. M. Field, att'y for defendant, Canandaigua, N. Y. Monroe special term, 24th September, 1883. Read on motion and ordered filed in Ontario Co. clerk's office. Edmond Redmond, sp. dep'ty clerk. Filed Oct. 1, 1883. B. Ellis, clerk.

13 Supreme Court.

CATHERINE L. EDWARDS
against
TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.

GENTLEMEN: Take notice that upon the summons, complaint, and answer, or copies thereof, and upon the petition by defendant and bond, with copies thereof, you are herewith served, and upon all other papers served herein, this court will be moved at the next special term thereof, to be held at the court-house in the city of Rochester on the 24th day of September, 1883, at the opening of the court, or as soon thereafter as counsel can be heard; that this suit be removed into the circuit court of the United States for the northern district of New York, and that this court accept defendant's said petition and bond and proceed no further in this suit or for such further order or relief as the court may grant in the premises.

Dated Canandaigua, Sept. 13th, 1883.

Yours, &c., H. M. FIELD,
Attorney for Defendant.

To Cogswell, Bentley & Cogswell, attorneys for plaintiff.

14 *Trial Desired in Ontario County.*

In the Supreme Court of the State of New York.

CATHERINE L. EDWARDS, Plaintiff,

against

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN., Defendant.

To the supreme court of the State of New York:

The petition of the Travelers' Insurance Company of Hartford, Conn., the defendant named in the above-entitled action, respectfully shows to this honorable court—

1. That the suit or action is of a civil nature at law and is now pending in this court, the county of Ontario, which is within the United States circuit court for the northern district of New York, being designated as the county wherein the trial is desired.

2. That the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars; that the plaintiff in said suit or action by her complaint demands judgment against said defendant for five thousand dollars, besides costs.

3. That the controversy in said suit is between citizens of different States; that the plaintiff was, at the time of the commencement of this suit and still is, a citizen either of the State of New York or of the State of Massachusetts, your petitioner not being able
15 to state positively of which of the above-named States she is a citizen; that your petitioner was, at the commencement of this suit and still is, a corporation created and formed by and under the laws of the State of Connecticut.

4. Upon information and belief, that issue was joined herein by the service of the answer on or about the 30th day of July, 1883.

5. That no term of court has been held at which this action or suit could be tried, or could have been tried, and none is appointed to be held until the third Monday of October, 1883.

6. That your petitioner desires to remove the said suit or action into the circuit court of the United States for the northern district of New York, in pursuance to the acts of Congress in that behalf provided, and your petitioner offers herewith a bond, with good and sufficient surety, for its entering in the circuit court of the United States for the northern district of New York, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by the circuit court of the United States for the northern district of New York if such court shall hold that such suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail, if special bail was originally required therein.

Your petitioner therefore prays this honorable court to accept this petition and bond, and to proceed no further herein, except to make

the order of removal hereof to the circuit court of the United
16 States for the northern district of New York, as required by law, and to cause the record herein to be removed into the said circuit court; and your petitioner will ever pray, &c.

THE TRAVELERS' INSURANCE COMPANY
OF HARTFORD, CONN.,
By J. P. BATTERSON, *Pres't.*

STATE OF CONNECTICUT, }
County of Hartford, City of Hartford, } *ss:*

James G. Batterson, being duly sworn, doth depose and say that he resides in the city of Hartford, in said county of Hartford, and he is over fifty years of age, and that his occupation is insurance; that he is now, and for over one year last past has been, the president of the Travelers' Insurance Company of Hartford, Conn., the defendant in the above and within entitled action and suit; that the foregoing petition is true, to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

JAMES G. BATTERSON.

Subscribed and sworn to before me, at said city of Hartford, this 10 day of September, 1883.

[L. S.] JOHN P. BRONK,
Notary Public, Hartford Co., Conn.

17 STATE OF CONNECTICUT, }
County of Hartford, City of Hartford, } *ss:*

I, Francis Chambers, do hereby certify that I am a clerk of the superior court of said county; that John P. Bronk, Esq., the notary public before whom the foregoing and annexed affidavit of James G. Batterson was taken and sworn to, resides, and at the date of the taking of said affidavit resided, in said county; that said John P. Bronk was, at the time of the taking of said affidavit, a notary public duly authorized by the laws of the State of Connecticut to take the same and to take and certify the acknowledgment and proof of deeds, and that I am well acquainted with the handwriting of said John P. Bronk, and verily believe that the signature of said John P. Bronk to said affidavit, and to the jurat and certificate of the taking thereof, is genuine; that the foregoing and annexed oath and affidavit was and is taken in all respects as is required by the laws of said State of Connecticut.

In witness whereof I have hereunto set my name and my official seal this 10th day of September, A. D. 1883.

[L. S.] FRANCIS CHAMBERS,
Clerk of the Superior Court in and for Hartford County, Conn.

18 Know all men by these presents that the Travelers' Insurance Company of Hartford, Conn., as principal, and Daniel Shafer and A. Duncan Paul, of Canandaigua, in the county of On-

tario and State of New York, are held and firmly bound unto Catherine L. Edwards in the sum of one thousand dollars, to be paid to said Catherine L. Edwards, or to her certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, and our heirs, executors, and assigns, jointly and severaly, firmly by these presents.

Sealed the 10th day of September, in the year of our Lord one thousand eight hundred and eighty-three.

The conditions of this obligation are these: The said The Travelers' Insurance Company has applied to the supreme court of the State of New York to remove a certain suit or cause pending in said court, wherein Catherine L Edwards is plaintiff and the said The Travelers' Insurance Company is defendant, from the said supreme court to the circuit court of the United States for the northern district of New York.

Now, if said The Travelers' Insurance Company of Hartford, Conn., shall enter in the said circuit court of the United States for the northern district of New York, on the first day of its next session, a copy of the record in such suit, and shall pay all costs that may be awarded by said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in such suit, if special bail was originally required therein, then this obligation shall be void; otherwise to remain in full force and virtue.

19 THE TRAVELERS' INSURANCE CO.,
[L. S.] By J. G. BATTERSON, *Pres.*
A. DUNCAN PAUL. [L. S.]
DANIEL SHAFER. [L. S.]

Sealed & delivered in presence of—
J. P. BRONK.
A. L. HUNT.
J. HENRY METCALF,
As to A. Duncan Paul and Daniel Shafer.

STATE OF CONNECTICUT, } ss:
County of Hartford, City of Hartford, }

On this 10th day of September, A. D. 1883, before me personally came James G. Batterson, president of the Travelers' Insurance Company of Hartford, Conn., to me known, who, being by me duly sworn, did depose and [say] that he resided in the city of Hartford, in said county of Hartford; that he is the president of the Travelers' Insurance Company of Hartford, Conn.; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument was and is such corporate seal; that it was so affixed by order of the board of directors of said company, and that he signed the name of said company thereto by like order as president of said company.

JAMES G. BATTERSON,
President of the Travelers' Insurance Company.

Subscribed and sworn to before me this 10th day of September, 1883.

[L. S.] JOHN P. BRONK,
Notary Public, Hartford Co., Conn.

20 STATE OF CONNECTICUT, } ss:
County of Hartford, City of Hartford, }

I, Francis Chambers, do hereby certify that I am a clerk of the superior court of said county; that John P. Bronk, Esq., the notary public before whom the foregoing and annexed affidavit of James G. Batterson was taken and sworn to, resides, and at the date of the taking of said affidavit resided, in said county; that said John P. Bronk was, at the time of the taking of said affidavit, a notary public duly authorized by the laws of the State of Connecticut to take the same and certify the acknowledgment and proof of deeds, and that I am well acquainted with the handwriting of said John P. Bronk, and verily believe that the signature of said Bronk to said affidavit, and to the jurat and certificate of the taking thereof, is genuine; that the foregoing and annexed oath was and is taken in all respects as required by the laws of said State of Connecticut.

In witness whereof I have hereunto set my hand and affixed my official seal, at Hartford, Connecticut, on this 10th day of September, A. D. 1883.

[L. S.] FRANCIS CHAMBERS,
A Clerk of the Superior Court in and for Hartford County, Conn.

21 STATE OF NEW YORK, } ss:
County of Ontario, }

On the 11th day of September, 1883, before me personally came A. Duncan Paul & Daniel Shafer, to me personally known to be two of the same persons described in & who executed the within & foregoing bond & undertaking, & severally acknowledged that they had executed the same for the uses & purposes as therein expressed.

J. HENRY METCALF,
Notary Public for said County.

We admit personal service of the within papers this 14th day of September, 1883.

COGSWELL, B. & C.,
Pl'ff's Atty's.

Monroe special term, 24th September, 1883.—Read on motion & ordered filed in Ontario county clerk's office.

EDMOND REDMOND,
Sp. Dep'ty Clerk.

Filed Oct. 1, 1883.

B. ELLIS,
Clerk Supreme Court.

At a special term of the supreme court, held at the court-house in the city of Rochester and county of Monroe, in and for the State of New York, on the 24th day of September, 1883.

Present: Hon. William Rumsey, one of the justices of said court.

Order. Granted on the 24th day of September, 1883.

CATHERINE L. EDWARDS

vs.

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.

On reading and filing the summons and complaint of
22 plaintiff in the above-entitled action, and the answer of the defendant, and the petition made by defendant, verified on the 10th day of September, 1883, and the bond on behalf of defendant, with sureties, and the notice of motion with due proof of service of said motion papers on Mess. Cogswell, Bentley & Cogswell, attorneys for the plaintiff, on the 14th day of September, 1883, and after hearing H. M. Field, counsel for said defendant, no one appearing for the plaintiff, it is hereby ordered that this court accept, and it does hereby accept, said petition and bond, and proceed no further in this action, and that this suit and action be removed into the circuit court of the United States for the northern district of New York.

Endorsed as follows: Supreme court, special term. Catherine L. Edwards against The Travelers' Insurance Company of Hartford, Conn. Order removing this suit into circuit court of the United States for N. D. of N. York. H. M. Field, attorney for defendant. Monroe special term. Rochester, N. Y., 24th Sept., 1883. I hereby certify that the within order was at this term and on this day granted and ordered entered in Ontario county clerk's office. Edmond Redmond, sp. dep. clerk. Filed Oct. 1, 1883. B. Ellis, clerk.

STATE OF NEW YORK, *Ontario County:*

CLERK'S OFFICE, CANANDAIGUA, N. Y.

I, Bolivar Ellis, clerk of the county of Ontario, of the county court of said county, and of the supreme court, both being courts of record, having a common seal, do hereby certify that I have compared the annexed copy of summons, complaint & answer, petition & bond for removal, & notice of motion & order of removal with the originals remaining on file in this office, and that the same
23 is a correct transcript therefrom and of the whole of said original.

In witness whereof I have hereunto set my hand and affixed the seal of said county and courts this 1st day of October, 1883.

[L. S.] B. ELLIS, *Clerk.*

(Endorsed:) 2506. United States circuit court for northern district of New York. Catherine L. Edwards *vs.* The Travelers' Insurance Company of Hartford, Conn. Transcript of record from supreme court of the State of New York. Filed Nov. 20, 1883. Wm. S. Doolittle, clerk.

24 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the court-house in Syracuse on Tuesday, the 20th day of November, A. D. 1883.

Present: The Honorable William J. Wallace, judge.

CATHERINE L. EDWARDS
vs.
THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN. } Law. No. 2506.

On reading and filing copies of papers of record in the supreme court of the State of New York, Ontario county, in the above-entitled cause and certified copy — petition, bond, and order of removal of this cause from and out of the said supreme court into this court, now, on motion of Henry M. Field—

Ordered, That the said cause be, and the same is hereby, entered in this court.

That the appearance of the defendant herein, by the said Henry M. Field, its attorney, be, and the same is hereby, entered in this court, and that the cause proceed in this court in the same manner as if it had been brought in this court by original process against the said defendant.

25 *Minutes of Trial.*

At a stated term of the circuit court of the United States of America, for the northern district of New York, in the second circuit, held at U. S. court-house, in Albany, on the 18th day of January, A. D. 1884.

Present: The Honorable Alfred C. Coxe, judge.

CATHERINE L. EDWARDS
vs.
TRAVELERS' INSURANCE COMPANY. } Law. No. 2506.

Appearances: Cogswell & Cogswell, for plaintiff; Henry M. Field, for defendant.

On motion of plaintiff's counsel—

Ordered, That a jury be empaneled, and that this cause do now proceed.

The following petit jurors were then called and sworn: Albert R. Miller, Augustus Sangmaster, John Beattie, William Dolan, Oscar F. Russ, Thomas J. Wood, Thomas Burke, Henry C. Haskell, W. H. Slingerland, Richard Hotaling, William Reddon, Robert Casey.

Mr. W. Cogswell opens for plaintiff.

Plaintiff's witness: Andrew Jackson Bartholemew.

Court here takes a recess till 8 p. m.

8 P. M.

Court meets.

Present: As before.

* * * * * * *

26 *Trial Resumed.*

Plaintiff's witness: A. J. Bartholemew, continued.
Plaintiff rests.
Mr. Field opens for defendant.
Defendant's witness: Dr. S. A. Harris, deposition.

Court here adjourns till 9 a. m. to-morrow.

Trial Resumed.

SATURDAY, *January* 19, 1884—9 a. m.

Court meets pursuant to adjournment.
Present: Judge Coxe.

CATHERINE L. EDWARDS
vs.
TRAVELERS' INSURANCE CO. } Law. 2506.

Jury called. All present.

Defendant's witnesses: Ed. S. Wood, deposition; Charles H. Porter, E. M. Phillips, John B. Lewis; Dr. Follett, deposition.

Defendant rests.

Plaintiff's witnesses: A. J. Bartholemew, recalled; Lizzie A. Edwards, M. C. Davey, deposition; Thomas Sanders, Samuel S. Perry, George Sanderson, L. W. Curtis, Geo. M. Garland, James T. Babcock.

27 Evidence closed.

Court here takes a recess until 3.30 p. m.

3.30 P. M.

Court meets.
Present: As before.

Defendant's counsel moves the court to direct a verdict for defendant. Motion denied.
Mr. H. M. Field sums up for defendant.
Mr. W. F. Cogswell sums up for plaintiff.
Judge Coxe charges the jury.
The jury here retires, in charge of a sworn bailiff, to consider their verdict.

* * * * * * *

The jury in this case here comes into court, and, being called, all answer and say:

They find for the plaintiff in the sum of five thousand three hundred eighty-seven dollars and fifty cents ($5,387.50), and so say they all.

CATHERINE L. EDWARDS
vs.
THE TRAVELERS' INS. COMPANY. } Law. 2506.

The jury in this case having at this term of the court rendered a verdict in favor of the plaintiff, now, on motion of H. M. Field, counsel for the defendant—

Ordered, That the defendant have 60 days in which to
28 make and prepare and serve a proposed case and exceptions, with leave to turn the same into a bill of exceptions, and counsel for plaintiff a like time to make and serve proposed amendments thereto, for the purpose of making a motion for a new trial, and in the meantime let all proceedings on the verdict be stayed; and, if said case and exceptions is made and signed, then let all proceedings on the verdict be further stayed till the hearing and decision of said motion for a new trial.

ALFRED C. COXE.

29 United States Circuit Court, Northern District of New York.

CATHERINE L. EDWARDS
against
THE TRAVELERS' INSURANCE COMPANY. } No. 2506.

The above-entitled action having come on for trial at a term of this court held at Albany, in January, 1884, and a verdict having been rendered in favor of the plaintiff, and a stay of sixty days having been ordered by the court to enable the defendant to make a motion for a new trial upon a bill of exceptions, and the defendant having made such motion for a new trial at a term of this court held at Canandaigua, June 17th, 1884:

Now, after hearing Mr. Henry M. Field, for the defendant and the motion, and Mr. William Nath'l Cogswell, for the plaintiff, opposed—

It is ordered that said motion for a new trial herein be, and the same is hereby, denied.

Dated June 30th, 1884.

ALFRED C. COXE, *Judge.*

(Endorsed:) Law. No. 2506. United States cir. c't, N. D. of N. Y. Catherine L. Edwards against The Travelers' Insurance Company. Order denying motion for a new trial. Filed June 30, 1884. Wm. S. Doolittle, clerk.

30 United States Circuit Court, Northern District of New York.

CATHERINE L. EDWARDS
vs.
THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } Law. No. 2506.

This action having been removed from the supreme court of the State of New York into this court upon the petition of the defendant, and having come on for trial at a term of this court held at

the capitol, in the city of Albany, in this district, commencing on the 15th day of January, 1884, before the Hon. Alfred C. Coxe, judge, and a jury, and the issues therein having been then and there tried, and the jury having rendered a verdict on the fifth day of said term, being the 19th day of January, 1884, in the sum of five thousand three hundred and eighty-seven dollars and fifty cents, and entry of judgment having been stayed by an order of this court until the expiration of sixty days, and a motion for a new trial having been made on a case and exceptions, and the same having been denied, and the costs of the said plaintiff having been taxed in the sum of three hundred eighty-one dollars and forty cents:

Now, on motion of Messrs. Cogswell, Bentley & Cogswell,
31 plaintiff's attorneys, it is ordered and adjudged that the plaintiff, Catherine L. Edwards, recover of the defendant, The Travelers' Insurance Company of Hartford, Connecticut, the said sum of five thousand three hundred and eighty-seven dollars and fifty cents, so as aforesaid found by said jury, with interest thereon from the said day when said verdict was rendered, amounting to one hundred and fifty-four dollars and forty-three cents, together with the sum of three hundred eighty-one dollars and forty cents for costs, so as aforesaid taxed, amounting in the aggregate to the sum of five thousand nine hundred and twenty-three dollars and thirty-three cents.

Judgment signed and entered this 11th day of July, A. D. 1884, at four o'clock and thirty minutes p. m.

W. S. DOOLITTLE, *Clerk.*

(Endorsed:) Law. No. 2506. United States circuit court, northern district of New York. Catherine L. Edwards *vs.* The Travelers' Insurance Company of Hartford, Conn. Judgment-roll. Cogswell, Bentley & Cogswell, pl'ff's attorneys.

Dam.	$5,387 50
Int.	154 43
Costs	381 40
	$5,923 33

Filed July 11, 1884, at 4 h'r- 30 m. p. m. W. S. Doolittle, clerk.

32 *Case and Exceptions made by Defendant.*

United States Circuit Court for the Northern District of New York

CATHERINE L. EDWARDS

vs.

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.

This case was originally brought in the supreme court of the State of New York by the service of a summons therein on the 29 day of May, 1882, Cogswell, Bentley & Cogswell, of Rochester, New York, being the attorneys for the plaintiff.

That Henry M. Field, residing at Canandaigua, New York, duly appeared as attorney for the defendant.

That issue was duly joined while the action was pending in said supreme court.

That subsequently such proceedings were duly and regularly had in said court and in accordance with the Revised Statutes of the United States in such case made and provided that this cause was duly and regularly removed into this court upon the petition of the defendant, the plaintiff being a citizen of New York and defendant a citizen of the State of Connecticut; and this cause was duly entered and docketed in this court by virtue of an order duly made and granted on the 20th day of November, 1883, being on the first day of the term of this court held at the city of Syracuse, in said District.

33 The following are the pleadings:

Supreme Court, Ontario County.

CATHERINE L. EDWARDS
against
THE TRAVELERS' INSURANCE COMPANY.

The plaintiff in this action, for complaint against the defendant, says, upon information and belief—

That the defendant is a foreign corporation created under and by virtue of the laws of the State of Connecticut for the purpose of effecting insurance upon lives.

That upon the 20th day of February, 1882, the defendant, in consideration of the annual premium of one hundred and ninety-eight dollars and fifty cents then paid and thereafter to be paid to it on or before the 20th day of February in each year by Frank Edwards during the continuance of said policy, and of warranties made to it in a certain application for insurance by Frank Edwards, the insured and the brother of this plaintiff, did insure the life of said Edwards in the sum of five thousand ($5,000) dollars, and did promise and agree to pay to the plaintiff herein, within ninety days after due notice and satisfactory evidence of the death of said Edwards, the said sum of five thousand dollars.

That said Frank Edwards died on the 19th day of June, 1882, and that due notice of the death of the said Edwards was forthwith given to the said defendant, and satisfactory evidence thereof

34 furnished to said defendant on or before the 12th day of July, 1882, but that the said defendant, although often requested, has not paid to said plaintiff the whole or any part of the said five thousand dollars.

Wherefore the defendant demands judgment in the sum of five thousand dollars, with interest from the 9th day of October, 1882, besides costs.

COGSWELL, BENTLEY & COGSWELL,
Plaintiff's Attorneys, 18 Powers Block, Rochester, N. Y.

STATE OF NEW YORK, }
County of Monroe, } *ss:*

Catherine L. Edwards, being duly sworn, says: I am the plaintiff herein; the foregoing complaint is true of my knowledge, except those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

CATHERINE L. EDWARDS.

Sworn to before me July 3rd, 1883.

JOHN A. C. WRIGHT,
Notary Public.

Supreme Court, County of Ontario.

CATHERINE L. EDWARDS, Plaintiff,
against
THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN., Defendant.

35 The defendant in the above-entitled action, for its answer and defence to the complaint of the plaintiff therein, now comes and respectfully states and shows to this court for its—

First separate answer and defence.

I. The defendant, The Travelers' Insurance Company, admits that it is a foreign corporation, created under and by virtue of the laws of the State of Connecticut for the purpose of effecting insurance on lives and for the purpose of making and effecting contracts of insurance other than on lives.

II. This defendant admits that on the 20th day of February, 1882, it did insure the life of Frank Edwards, the brother of plaintiff, in the sum of five thousand dollars, and did promise and agree to pay to said plaintiff the said sum of five thousand dollars, at the time and in the manner and subject to the terms and conditions as are contained in the contract made with said plaintiff and with said Frank Edwards, on the 20th day of February, 1882, as will more fully appear by the contract of insurance, and which this defendant begs leave to refer to as a part of this answer the same as if more fully set out herein.

III. That this defendant admits that the said Frank Edwards, whose life was so insured by the defendant, died on the 19th day of June, 1882.

IV. That this defendant denies each and every allegation contained in the complaint of plaintiff herein, save and except so much thereof only as is hereinbefore admitted.

36 Second separate answer and defence.

The defendant herein, for a second and separate answer and defence to the complaint of the plaintiff, referring to and adopting the several admissions contained in the first separate answer and defence herein as part of this separate answer, further states and shows to this court—

That the policy of insurance in the said complaint mentioned (and which policy is made part of this separate answer and defence the same as if more fully set out herein) was made, issued, delivered by this defendant, and accepted by the insured and by the plaintiff in consideration of the express agreement and condition (among others) hereinafter more particularly set out herein, as well as the annual premium paid and to be paid by the insured, and which said agreement and condition was and is as follows:

"Eighth. That in the event of the death of the person insured, then the party assured, or his or her legal representatives, shall give immediate notice in writing to the company at Hartford, Conn., stating the time, place, and cause of death, and shall within seven months thereafter, by direct and reliable evidence, furnish the company with proofs of the same, giving full particulars without fraud or concealment of any kind; and it is further agreed that the disappearance or long-continued absence of the person insured, unheard of, shall not be regarded as evidence of death or of any right to receive under this policy until the full term of his life expectancy under the American experience table of mortality shall have expired. It is also agreed that no suit or proceeding at
37 law or in equity shall be brought to recover any sum insured under this policy unless the same is commenced within one year from the time the right of action accrues."

And this defendant further alleges that this plaintiff has not performed the terms of this said eighth condition, in this, that this plaintiff did not give to this defendant, at Hartford, Conn., or elsewhere, immediate notice in writing of the death of the said insured, and that this defendant did not receive from said plaintiff notice of the death of the said Frank Edwards, who was the insured in said policy, until the 10th day of February, 1883, and that this plaintiff did not within seven month after the 19th June, 1882, give notice in writing to this defendant, at Hartford, Conn., or elsewhere, nor in the manner and form as required in the said eighth condition contained in said contract of insurance, and has not delivered to or furnished the defendant with proofs of death of said Frank Edwards, with full particulars; but, on the contrary, the said plaintiff, although requested by said defendant, refused to furnish full particulars of the cause of death of said Frank Edwards, and has kept concealed from this defendant the true and real cause of the death of the said Frank Edwards, and has kept concealed full particulars in regard thereto.

And this defendant alleges that by reason of the premises this plaintiff has not kept or performed the said "eighth condition," and by reason thereof this defendant is now not indebted to the said plaintiff in any sum of money whatever, and is not liable upon said contract of insurance to the said plaintiff.

38 Third separate answer and defence.

And this defendant, further answering the complaint of plaintiff, states and shows to this court upon information and belief—

That the defendant herein, for a third and separate answer and

defence to said complaint, and restating and adopting the several admissions contained in the first separate answer and defence as part of this separate answer and defence, further states and shows to this court upon information and belief—

I. That the policy of insurance in said complaint mentioned (and which policy of insurance is made a part of this separate answer and defence the same as if more fully set out herein) was made, issued, and delivered by the defendant and accepted by the insured and by the plaintiff in consideration of certain express conditions and agreements (among others) hereinafter more particularly referred to, as well as of the annual premium paid and to be paid by the insured, and one of which agreements and conditions, *is* designated as number "second," was and is in part as follows:

"Second." That in case the said insured shall die by suicide, whether the act be voluntary or involuntary, felonious or otherwise, or whether the insured be sane or insane at the time of the act, then this policy shall be null, void, and of no effect, except in the case provided for by the sixth condition of this policy, and which said above condition and agreement is made a part of this
39 separate express condition and agreement, numbered and designated in said policy of insurance as second.

The defendant further states and shows that, although the said policy of insurance was issued by the defendant and accepted by the insured and this plaintiff upon the express condition and agreement above mentioned, yet the said insured, the said Frank Edwards, and the said plaintiff did not and have not kept and performed the condition and agreement above mentioned, but did and wholly failed to keep and perform the same and have made default in this, that is to say—

That the said Frank Edwards, at the time mentioned in the said complaint, and in the city of Boston, in the State of Massachusetts, died by his own hand and act, and that the said Frank Edwards did then and there commit suicide by taking voluntarily a quantity of cyanide of potassium, and that his death was then and there caused by ingestion of cyanide of potassium or of some other poison of a like nature.

That this defendant further states and shows that by reason of the premises the policy of insurance mentioned in said complaint became null and void and of no effect, save and except as provided in the sixth condition of the said policy, and which said condition defendant makes a part of this separate answer the same as if more fully set out herein.

Wherefore the defendant now comes and asks that the complaint of the plaintiff herein be dismissed with costs.

HENRY M. FIELD,
Attorney for Defendant, Canandaigua, New York.

40 STATE OF CONNECTICUT, } ss:
County of Hartford, City of Hartford, }

I, James G. Batterson, of the State, county, and city aforesaid, being duly sworn, do*th* depose and say that I reside in the State,

county, and city aforesaid; I am the president of the Travelers' Insurance Company, of Hartford, Conn., the defendant in the within-entitled action, and have been for over one year last past; that *he is* sixty years of age, and *is* engaged in the business of insurance in the city of Hartford aforesaid. I have read the foregoing answer as made by the defendant, and know the contents thereof, and I further say that the said answer is true to the knowledge of this deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters *he* believes it to be true.

JAMES G. BATTERSON.

Subscribed and sworn to before me on this 26th day of July, 1883.

WALTER G. COWLES,
Notary Public.

STATE OF CONNECTICUT,
County of Hartford, City of Hartford, } *ss:*

I, C. W. Johnson, do hereby certify that I am the clerk of the superior court of said county; that Walter G. Cowles, Esq., the notary public before whom the foregoing and annexed affi-
41 davit of James G. Batterson was taken and sworn to, resides, and did at the date of the taking of said affidavit reside, in said county, that the said Walter G. Cowles was, at the time of the taking of said affidavit, a notary public duly authorized by the laws of the State of Connecticut to take the same and to take and certify the acknowledgments and proof of deeds, and that I am well acquainted with the handwriting of said Cowles, and verily believe that the signature of said Cowles to said affidavit, and to the jurat and certificate of the taking thereof, is genuine; that the foregoing and annexed oath and affidavit was and is taken in all respects as required by the laws of said State of Connecticut.

In witness whereof I have hereunto set my hand and affixed my official seal on this 26th day of July, A. D. 1883.

Hartford, Connecticut.

[SEAL.] C. W. JOHNSON,
Clerk of the Superior Court for the County of Hartford.

That this cause being on the calendar of this court at a term thereof held at the city of Albany, in said northern district of New York, *and* the same came on to be heard on the 18th day of January, 1884, Hon. A. C. Coxe, judge, and a jury.

The plaintiff was then and there represented by Messrs. Cogswell, as counsel for the plaintiff, and H. M. Field, counsel for the defendant.

A jury having been duly empaneled, Mr. Cogswell presented the case to the court in behalf of the plaintiff.

It was here conceded that the death of Frank Edward occurred on the 19th day of June, 1882.

42 Mr. Cogswell produces a paper, which is admitted to be a receipt made by the defendant, and offers to read the same in evidence.

Counsel for defendant thereupon objects to the paper being read in evidence unless the policy referred to in the complaint is produced. Counsel for the plaintiff states to the court that the plaintiff will not produce the policy at this time. The court thereupon overrules the objection and counsel for def't excepts to the ruling.

The receipt was then read in evidence and is as follows:

"First premium receipt. Life department.

The Travelers' Insurance Company of Hartford, Conn.

Number of policy, 35827. Am't premium, $198.50.

Received the sum of one hundred ninety-eight dollars and fifty cents, being the first annual payment of premium on policy No. 35827, whereby the life of Frank Edwards is insured for five thousand dollars. By this payment said policy is made binding upon the company from the date of this payment to the twentieth day of February, one thousand eight hundred and eighty-three, and no longer; and if the next succeeding payment of premium be not made on or before that day, then said policy shall and will cease and determine, as conditioned and agreed in said policy;
43 not valid until the above-stated premium has been received during the lifetime of said Frank Edwards and this receipt countersigned by E. M. Phillips, agent of this company at Southbridge, Mass.

Hartford, Conn., Feb'y 20th, 1882.

(Signed) RODNEY DENNIS, *Secretary.*"

[On margin.] The Travelers' Insurance Company of Hartford. The agent who receives the within premium should countersign this receipt, and invariably state over his signature the date at which the payment is made to him.

The foregoing receipt is written and countersigned across the face as follows:

"The within premium received and this receipt countersigned by me this 24 day of May, one thousand eight hundred and eighty-two.

E. M. PHILLIPS,
Agent at Southbridge, Mass."

The said foregoing receipt is endorsed as follows:

"All policies and agreements made by this company are signed by its president or secretary. No other person can alter or waive any of the conditions of the policies or issue permits of any kind or make agreements binding upon said company.

(Signed) RODNEY DENNIS, *Secretery.*"

ANDREW J. BARTHOLOMEW, a witness for the plaintiff, was then sworn and did testify as follows, being examined by Mr. GOGSWELL:

I reside in Southbridge, Massachusetts; have for 24 years; am an attorney; I know E. M. Phillips, of Southbridge; I knew Frank

Edwards; had a conversation with Mr. Phillips shortly after
44 the death of Frank Edwards, in regard to the proofs; it was before the funeral, on the 23rd.

Q. Please relate that conversation.

Counsel for def't objects because the defendant would not be bound by the conversation had with Mr. Phillips.

Court then inquires: Mr. Phillips was the agent?

Mr. Cogswell says: Yes, sir; he was the agent of the company.

Counsel for def't then states: He was not the agent then; when the receipt was delivered; that was the end of his agency in the matter.

It was further objected that the evidence would be immaterial. The contract provides proofs of death shall be in writing.

Objections overruled by the court and counsel for def't excepts thereto.

Witness answers: Met Mr. Phillips, I think, in the Hartwell drug-store, on the corner of Main & Central streets. He said to me, Mr. Edwards' life was insured in the Travelers' Life Ins. Co., and that he was going to Hartford. I asked him if that was so. I didn't at that time know that he had a policy in that company. He said he was going to Hartford, and would give to the company the notice of his death, and would procure the blanks for the proofs of loss. I asked him if it would do as well for him to give the notice to the company in that way as for any party interested. He said it would, and I think that was all that was said then; saw Mr. Phillips some days after that; met him somewhere in the street—can't tell where—and he told me he had been to Hartford and had procured the blanks
45 and that if I would come to his office he would deliver them to me.

I made out some of the proofs of loss for the Edwards family; subsequently went to the office of Mr. Phillips and got the blanks. I took the papers, saying to him that I would procure the affidavit required, and he said to me: "When you get them completed I want you to return them to me." I made them out.

Mr. Cogswell here called upon the def't's counsel to produce the affidavits.

Mr. Field replies: I will produce the papers that were served at that time, but it is on the understanding that we do not concede that they were received on any certain day. With these papers were received two letters, and I ask that these two letters shall be read with the proofs accompanying them. I object to plaintiff reading the proofs without reading the letters.

Court overrules the objection, and counsel for defendant duly excepts to the decision.

Papers were produced, shown witness, and he says: Those are the papers filled out. They are in my handwriting, except the physician's certificate. After they were filled out I carried them to Mr.

Phillips' office on the third day of July and delivered them to him, and they are the papers Mr. Phillips handed to me.

Counsel now offers the papers in evidence. Defendant's counsel objects upon the ground that the service of these papers on Mr. Phillips at Southbridge is not in compliance with the con-
46 tract; they are immaterial. Mr. Phillips was not agent of the company for any such purpose. Plaintiff must first show the special agency of Mr. Phillips.

Objection overruled by the court and defendant excepts.

The papers were read in evidence and are as follows:

For the Travelers' Insurance Company of Hartford, Conn.

STATE OF MASS., *County of Worcester, Town of Southbridge:*

The undersigned, being duly sworn, deposes and says that he is a physician and surgeon by profession, and that he was family physician [for] Mr. Frank Edwards, of Southbridge; that his death occurred on the 19th day of June, 1882; and he further certified that he identified the dead body and knew it to be the body of said Frank Edwards. I have been his family physician for about six years; his health has always been good; have never known of his being sick except an occasional headache; have never known of any habits that affected his health; duration of sickness at the time of his death could not have been more than an hour or two; no physician present at the time of his death. Dr. F. A. Harris, of Boston, first saw him after death and was present and conducted the autopsy June 23rd, which disclosed extensive congestion of the brain and effusion of blood, complete congestion of left lung and partial congestion of the right. All other organs were in a normal condition. Dr. William T. Lamb, of Lawrence, was present and assisted in the post-mortem. Probable cause of death, heat and over exertion.

L. W. CURTIS, M. D.,
Attending Physician.

Sworn [to] before me this 26th day of June, 1882.

A. J. BARTHOLOMEW,
Justice of the Peace.

47 The attending physician will in his written certificate state accurately the nature of his relationship or acquaintance with the deceased and the direct or indirect causes of death; also, whether the illness was caused by any pernicious habits; whether there was a post-mortem examination; if so, copy of autopsy, with full particulars, to be attached to this certificate; whether any other physician was associated with him in the management of the case, or as counsel; if so, name and residence; also all facts concerning or developed by the history, progress, or treatment of the case which would throw light upon the cause or causes of illness and death. In cases where the attending physician cannot certify to identity he

should give an accurate description of the size, color of hair and eyes, and such other particulars as might assist in establishing identity.

48 *Life Department.*

Travelers' Insurance Company of Hartford.

Identity of party.

STATE OF MASSACHUSETTS, } ss:
County of Worcester, }

W. S. Robinson, of Southbridge, being duly sworn, deposes and says that he was personally acquainted with Frank Edwards, of Southbridge, now deceased, and that the said Frank Edwards was the identical person whose life was insured in the Travelers' Insurance Company under policy No. 35827, bearing date the 20th day of February, A. D. 1882, and who was therein described as Frank Edwards, of Southbridge; age, 30 years; occupation, merchant.

W. S. ROBINSON.

Sworn before me this 26 day of June, A. D. 1882.

A. J. BARTHOLOMEW,
Justice of the Peace.

Proof from Sexton or Undertaker.

STATE OF MASSACHUSETTS, } ss:
County of Worcester, }

Samuel Williams, of Southbridge, being duly sworn, deposes and says that he is the sexton at Southbridge; that as such sexton he was called upon on the twentieth day of June inst. last to prepare the dead body of Frank Edwards for burial; that he placed said body in a coffin and duly closed and fastened the lid, and that he placed said coffin containing the said body in a grave in said Southbridge, and that the said coffin was left by deponent in
49 said grave on the twenty-third day of June, A. D. 1882, in said Southbridge.

SAMUEL WILLIAMS,
Undertaker.

Sworn [to] before me this 26th day of June, A. D. 1882.

A. J. BARTHOLOMEW,
Justice of the Peace.

Proof from Minister or Other Person Who Officiated at Interment of the Deceased.

STATE OF MASSACHUSETTS, } ss:
County of Worcester, }

Frank Maguire, of Southbridge, being duly sworn, deposes and says that he is the pastor of the Universalist church at Southbridge, and that he was personally acquainted with Frank Edwards, of

Southbridge, in his lifetime, now deceased, and that said Frank Edwards was interred in the burial ground of Southbridge on the 23rd day of June, A. D. 1882, and that he, as such pastor, officiated at such interment.

FRANK MAGUIRE.

Sworn [to] before me this 27th day of June, A. D. 1882.
A. J. BARTHOLOMEW,
Justice of the Peace.

*Proof of Age of Party.**

STATE OF MASSACHUSETTS, }
County of Worcester, } *ss:*

Stephen K. Edwards, of Southbridge, the brother of Frank
50 Edwards, late of Southbridge, Mass., deceased, being duly sworn, deposes and says that Frank Edwards was born at Southbridge, Mass., in Worcester county, on the 20th day of April, A. D. 1852, and that the said Frank Edwards was consequently on June 19th, 1882 (the date of his decease), thirty years and two months old, lacking but one day.

STEPHEN K. EDWARDS.

Sworn [to] before me this 28th day of June, A. D. 1882.
A. J. BARTHOLOMEW,
Justice of the Peace.

Proof Required from Assignee.

(No assignee.)

Proof Required from Party Who Has Insured the Life of Another Person.

STATE OF MASSACHUSETTS, }
County of Worcester, } *ss:*

Catherine L. Edwards, of Southbridge, Mass., being duly sworn deposes and says that she is the same person who effected an insurance on the life of Frank Edwards in the Travelers' Insurance Company on the 20th day of February, A. D. 1882, under policy No. 35827. Deponent further says that she had an insurable interest in the life of said Frank Edwards to the amount of $5,000,
51 and that the same was not created by reason of any gambling or other illegal transaction, nor was the effecting of said insurance a mere gambling or speculating transaction; but the said Frank Edwards was brother of this claimant, and procured said policy for her, naming her as the beneficiary therein.

CATHERINE L. EDWARDS.

* This affidavit may be made by a relation of the party. In all cases where the age of the life assured has not been admitted on the policy the fullest and most satisfactory evidence must be furnished, in order to make the application for claim complete.

Sworn before me this 30th day of June, A. D. 1882.
A. J. BARTHOLOMEW,
Justice of the Peace.

*Proof Required as to the Movements of the Party While Assured by the Company.**

STATE OF MASSACHUSETTS, }
County of Worcester, } *ss:*

William C. Barnes, of Southbridge, Mass., being duly sworn, deposes and says that he was personally acquainted with Frank Edwards, late of Southbridge, deceased; that from the 20 day of February, A. D. 1882 (the day the insurance was effected), up to the 19th day of June, A. D. 1882 (the date of his decease), the said Frank Edwards was not absent from the State of Massachusetts, to the best of deponent's knowledge, information, or belief, but once on a trip to New York city, N. Y., near the first of June, for three days.

WM. C. BARNES.

Sworn before me this 28th day of June, A. D. 1882.

—— ——.

52 *Statement of Friend.*

STATE OF MASSACHUSETTS, }
County of Worcester, } *ss:*

W. S. Robinson, of Southbridge, Mass., being duly sworn, deposes and says that he was personally acquainted with Frank Edwards, of Southbridge, deceased; that he was not present at the time of the death of said Frank Edwards, which was caused by congestion of the brain. Age of deceased, 30 years.

W. S. ROBINSON.

Sworn before me this 27th day of June, A. D. 1882.
A. J. BARTHOLOMEW,
Justice of the Peace.

(Endorsed:) Copy. No. 38527. File No. ——. Amount, $5,000. Proof of loss on life of Frank Edwards, of Southbridge, Mass. Life Department. Travelers' Insurance Co. of Hartford, Conn. The — day of ——, 18—.

53 Have computed interest on this policy, commencing on the 3d day of October, 1882, up to 18th January, 1884, at six per cent., and the amount is $387.50. The whole amount of principal is $5,387.50.

Witness was then cross-examined by Mr. FIELD, counsel for defendant:

Saw Mr. Phillips first somewhere between the 19th and 23d of June, I think. I did not know at that time that there was any

* If the party has been absent, state when, where, and how often, with every particular the party is possessed of.

policy in the Travelers' until he told me. I am related to the Edwards family by marriage; have been very intimate with them, and have done business for them; was the justice before whom the affidavits were sworn. I filled up the affidavits, except Dr. Curtis', and that is in his own handwriting.

At that time I knew there had been a post-mortem examination of the body of Frank Edwards; have taken considerable personal interest in this matter for plaintiff; appeared for her in Boston as her counsel. When witnesses were being examined the proofs were delivered to Mr. Phillips on the 3rd day of July, 1882, just as they are now produced. I got Katie to sign her affidavit at the time I served the proofs.

I think I had seen the policy before the third day of July, 1882; saw it in the hands of Stephen K. Edwards; read it over, but not very carefully; have stated to the jury all that was done by me in reference to giving notice to the company as to the death of
54 Frank Edwards; was present at the funeral of Frank Edwards. The plaintiff was there; remember that Dr. Follett, of Boston, came to Southbridge on the day of the funeral and saw some members of the Edwards family, and I saw him. I think he saw Mr. Barnes, possibly Stephen K. Edwards, and Dr. Lamb and myself.

Dr. Lamb is a physician residing in that town, and acquainted with the family, and has never been engaged as a practicing physician since he has been there.

Dr. Follett did then make suggestion that there should be a post-mortem examination of the body of Frank Edwards, and afterwards, on the 23d of June, there was an autopsy made. I think I never saw the papers which I handed to Mr. Phillips on the 3d of July, 1882, again until to-day. It is very possible that S. K. Edwards did speak to me about them after that time. I never saw them. I think something was said to me about these proofs subsequent to the 3d day of July, several months after. S. K. Edwards is a brother of Frank Edwards. Dr. Lamb went to Fayal in November as a ship doctor, and has not returned.

Re-examination continued by Mr. COGSWELL:

The funeral of Frank Edwards was at one in the afternoon, and conversation with Dr. Follett was within 20 minutes of that hour. Dr. F. said, after introduction, that he had come upon a very unpleasant mission, and took a letter from his pocket that would explain. I asked him if he knew the place of Edwards' death, and he said he did; asked him if he had any personal knowledge of the circumstances of his death. He said he had none; asked him if he was acquainted with Dr. Harris,
55 who was the medical examiner who was called to view the body; said he was well acquainted with him; said he had not been to the Parker House to make any inquiry as to the circumstances of the death; asked him if any of the persons or companies had, to his knowledge, been there, and he didn't know that they had. He said Dr. Lamb had told him what the certificate was

which Dr. Harris had given; asked him if he had any suspicion that the death of Mr. Edwards was from any other than natural causes, as Dr. Harris had certified. Dr. Follett said there were some considerable amounts of insurance upon his life, and I think it would be a proper and wise course under the circumstances that the friends should have an autopsy on their own account. I don't make any demand of the kind nor any request in the matter. I said to him that I could not regard it anything else than an impertinence, but I should not give any advice as an attorney. The friends can do as they please. It was within 20 minutes of the time appointed for the funeral. Mrs. Edwards and others of the friends were there at the house preparing to go. They did have a post-mortem examination afterwards.

Cross-examined by Mr. FIELD:

Mr. Edwards was not actually buried on that day, but was placed in a receiving tomb for the purposes of a post-mortem examination. There was a post-mortem examination had the next day at the request of the family. I was there a portion of the time. Dr. Curtis is the man who made this affidavit. Dr. Lamb, Dr. Curtis,
56 and Dr. Harris were present at the post-mortem examination. The undertakers were there and several others, but I don't recall them. None of the family were present; don't know that pl'ff knew that post mortem was had; possibly she did. Plaintiff lived at Southbridge then. I see her often. She visits and calls at our house. Our houses are about ½ of a mile apart. She was then stopping at her father's part of the time, and with her brother Stephen part of the time. I saw the permit when Dr. —— signed it, and it was a piece of paper in substance this: That Frank Edwards, aged thirty years, died on the 10th day of June, 1882; cause, congestion of the brain, produced by over exertion and heat; signed, Dr. F. A. Harris. This certificate was delivered first to the undertaker, and the last time I saw it it was in the office of the city clerk at Boston.

Plaintiff here rests.

Counsel for defendant now moves to strike from the case the conversation which witness had with Mr. Phillips, upon the ground that plaintiff has not furnished any evidence that Mr. Phillips was agent for the company for any purposes relating to the contract itself, or in reference to the mode of making or receiving proofs of loss under the contract. It is not competent and does not bind the defendant without more evidence than *they have* furnished.

The court denies the motion thus made, and counsel for defendant duly excepts to the ruling.

57 Counsel for defendant now moves that the court direct the jury to find a verdict for the defendant upon the following grounds:

1st. That the plaintiff has not proved the contract alleged in the complaint.

2nd. That plaintiff has not established that plaintiff furnished evidence of due notice of death and satisfactory evidence of the death of Frank Edwards, as alleged in the complaint.

3rd. That the plaintiff has not produced the contract itself upon which the action is brought.

The court denied the motion and refused to direct the jury to find a verdict for the defendant, and counsel for defendant did then and there except to the ruling so made.

The counsel for the defendant having stated to the court and jury the facts stated in the answer of the defendant constituting its defense herein, and then offered in evidence the contract of insurance which the defendant made with the plaintiff and Frank Edwards on the 20th day of February, 1882, the said contract being produced by the counsel of the plaintiff at the request of defendant's counsel, and said contract is as follows:

58 *Life Department.*

Policy No. 33827. Sum insured, $5,000. Endowment insurance policy. Annual premium, $198.50.

The Travelers' Insurance Company of Hartford, Conn., in consideration of the warranties made in the application for this policy, and of the annual premium of one hundred and ninety-eight dollars and fifty cents, to be paid to the said company on or before the twentieth day of February in each and every year during the continuance of this policy, does hereby insure the life of Frank Edwards, hereinafter called the insured, in Southbridge, in the county of Worcester and State of Massachusetts, in the sum of five thousand dollars for the term of twenty years from and after the date hereof, the said sum insured to be paid at the office of said company, in Hartford, Conn., to Catherine L. Edwards' sister, hereinafter called the assured; but if the said insured shall survive the above assured then said sum shall be paid to the legal representatives of the said insured within ninety days after due notice and proof as hereinafter required; that the death of the said Frank Edwards has taken place during the continuance of this policy and within that period of any year for which period the premium shall have been actually paid and not otherwise; the balance of the year's premium, if any, being first deducted therefrom. In the event
59 of any indebtedness to this company, either on the part of the insured or assured, then such sum only as shall remain in excess of such indebtedness shall become due and payable as aforesaid; or if the said Frank Edwards shall survive said term of twenty years from the date hereof, then within ninety days after the expiration of said term the said sum insured, less any indebtedness as aforesaid, shall be paid by said company at its office in Hartford, Conn., to Frank Edwards or his legal representatives.

This policy is issued and accepted upon the following express agreement, which are conditions precedent to the contract:

First. That it is warranted by the insured and assured that all and several the declarations and answers contained in or endorsed

upon the application for this insurance, which application is hereby referred to and made a part of this contract. are the full, complete, and only answers made by the insured or assured; that they are correctly recorded and wholly and strictly true, and that if this policy has been otherwise obtained, through any fraud, misrepresentation, evasion, or concealment, then this policy shall be absolutely null and void.

Second. That the said insured is under this policy freely permitted to visit or reside in any civilized abode in the Western Hemisphere lying north of the thirty-second parallel of north latitude, and in the United States lying south of said thirty-second parallel (excepting from the first day of July to the first day of No-
60 vember), and in the Eastern Hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich; and he may also pass as a passenger by usual route and means of public conveyance to and from any part or place within the foregoing limits; but if he shall at any time during the continuance of this policy pass beyond or be without the foregoing limits, or shall be engaged in making any ærial voyage, or in blasting, mining, or submarine operations, or as a fireman using steam fire engine, or in the manufacture, use, custody, handling, or transportation of highly inflammable or explosive substances, or engaged in any capacity upon any sea, sound, inlet, river, lake, or railroad, either as owner, master, subordinate, or employee; or if he shall enter into any military or naval service whatsoever, whether voluntary or otherwise, the militia when not in actual service alone excepted, without the consent of this company previously given in writing in each or either of the foregoing cases; or if he shall to such an extent indulge his appetite in the use of alcoholic or narcotic stimulants or become the subject of any other vice, so that either of these, whether by habitual or occasional indulgence, shall endanger his life or impair his health; or if he shall have delirium tremens; or if he shall become convicted of felony or shall die by suicide, whether the act be voluntary or involuntary, felonious or otherwise, or whether the insured be sane or insane at the time of the act; or if he shall die by the hands of justice or by or in consequence of a duel, or by or in consequence of the
61 acts of hostile Indians or public enemies, or of the violation of any law of the United States or of the States or Territories of the United States, or of any government within whose limits he may be, or while doing any unlawful act or in consequence thereof, then this policy shall be null, void, and of no effect, except in the cases provided for by the sixth condition of this policy.

Third. That this policy shall not take effect until the advance premium hereon shall have been paid, during the lifetime of the person whose life is hereby insured, as per first premium receipt accompanying each policy, and that if any subsequent premium on this policy, or any installment thereof, or any note given for the premium, or any part thereof, shall not be paid on or before the day specified for the payment of the same, then this policy shall cease and determine and this company shall not be liable for the payment

of the sum insured herein, nor any part thereof, except as hereinafter provided, and that no premium hereon shall be considered as paid unless a receipt shall have been given therefor, signed by the president or secretary of the company.

Fourth. That the total insurance granted by this company on any one person shall not exceed sixteen thousand dollars, unless the fact and amount of insurance in excess of said sum of sixteen thousand dollars shall be endorsed hereon and subscribed by the president or secretary of the company; and it is expressly understood and agreed by the assured that if there be now existing, or shall hereafter exist, any other insurance or insurances by this company, whether under life, term, or general accident policies or tickets, on the person
62 whose life is insured hereby, and such other insurance or insurances shall, together with the sum insured under this policy, exceed sixteen thousand dollars, then, so long as such other insurance or insurances, or any part thereof, shall continue to exist this company shall not be liable for the payment of any sums in excess of the amount hereby limited, except in case of special agreement endorsed hereon as aforesaid, and then only for the amount so agreed and endorsed. All premiums paid on policies or tickets for such excessive insurance shall be returned, on demand, to the insured, or his legal representaves, so far as such premiums are applicable to sums in excess of the amounts hereby limited; the return premiums in all cases to be applied to the cancellation of insurance last taken.

Fifth. That in every case in which this policy shall cease and determine, or become null and void, all premiums paid in respect to the same shall be forfeited to this company, except as hereinafter provided.

Sixth. That if the said insured shall die by suicide or in consequence of indulgence in the use of alcoholic or narcotic stimulants, or other vices as indicated in above second condition, during the continuance of this policy, the then full net value of this policy, per American experience table of mortality, and four and one-half per cent. interest, and not more, shall be paid in manner and form as hereinbefore provided.

Seventh. That if, after the payment of three or more annual premiums on this policy, the same shall cease and determine, by reason of default in the payment of any subsequent premium
63 when due, then, notwithstanding such default, this company will grant a "paid-up" policy, payable as above, for as many times the sum of two hundred and fifty dollars (in even dollars) as there shall have been complete annual premiums paid hereon when default in the payment of the premium shall have first been made, provided that this policy shall be transmitted to and received at the home office of this company in Hartford, and application made in writing for such "paid-up" policy by the assured, within six months after default in the payment of the premium hereon shall first have been made as aforesaid.

Eighth. That in the event of the death of the person insured then the party assured, or his or her legal representatives, shall

give immediate notice in writing to the company at Hartford, Conn., stating the time, place, and cause of death, and shall within seven months thereafter, by direct and reliable evidence, furnish the company with proofs of the same, giving full particulars, without fraud or concealment of any kind; and it is further agreed that the disappearance or long-continued absence of the person insured, unheard of, shall not be regarded as evidence of death, or of any right to recover under this policy, until the full term of his life's expectancy, under the American experience table of mortality, shall have expired.

It is also agreed that no suit or proceeding at law or in equity shall be brought to recover any sum insured under this policy, unless the same is commenced within one year from the time the right of action accrued.

Ninth. That no assignment of this policy shall be valid
64 unless made in writing endorsed hereon, and unless a copy of such assignment shall be given to this company within thirty days after its execution, and any claim against this company arising under this policy shall be subject to proof of interest.

It is also agreed that the company shall not be held responsible for the validity of any assignment.

NOTE.—Agents of the company are not authorized to make, alter, or discharge, contracts, give credits, grant permits, or waive any of the conditions of this policy.

In witness whereof the Travelers' Insurance Company has caused these presents to be signed by its president and attested by its secretary, and delivered in the city of Hartford and State of Connecticut, the twentieth day of February, A. D. one thousand eight hundred and eighty-two.

(Signed) J. G. BATTERSON, *President.*
Attest: RODNEY DENNIS, *Secretary.*

* See note No. 1 on back.
† See note No. 2 on back.

The following is endorsed on the back of the policy, to wit:

Note No. 1.

The possession of this policy alone, by the parties in benefit, is not evidence that insurance has been finally effected on the life of the person named therein, as the insurance is not completed until the first premium is actually paid and the "first premium receipt" properly countersigned by the agent named therein delivered with the policy.

65 Note No. 2.

Renewals of this policy are to be made by means of receipts issued from the office of the company, signed by the secretary, and to be countersigned by a special agent of the company: Provided, however, the premiums for which such receipts are issued shall be paid to such agent on or before the day said premiums are due. No receipt will

be deemed valid by the company unless countersigned by the agent named therein on or before the day of the date thereof; and the date of the countersignature must be the same as the date when the premium is actually paid.

A policy may be renewed at the option of the company when payment of premium has not been promptly made by applying to the office of the company and giving satisfactory evidence of existing good health.

Notice and proofs of death required.

☞ In case of death, immediate notice must be given to the company at Hartford, Conn., stating number and date of policy; also time, place, and cause of death.

☞ Full and complete proofs, setting forth the time, place, and cause of death, must be furnished as provided by the conditions of the contract.

Copy of application for insurance on the life of Frank Edwards and upon which policy No. 35827 is issued.

Part 1.

1. Name (at full length) of the person whose life is proposed
66 for insurance? Frank Edwards. Residence? Southbridge. County? Worcester. State? Mass. Occupation? Merchant.

2. Name (at full length) of the party for whose benefit the insurance is desired? Catherine L. Edwards at death, or to myself if living at maturity. Relationship to the person whose life is proposed for insurance? Sister. Residence of beneficiary? Southbridge, Mass. In the event of the prior death of the beneficiary, to whom is the insurance to be payable? Legal representatives.

3 A. How much insurance is desired? Ans. 5,000 dollars.

4 A. During what term are the premiums to be paid? Ans. During life.

B. Are the payments to be made annually? or semi-annually? or quarterly? Ans. Annually.

5. Where were you born? Ans. Southbridge, Mass.; year, 1852; month, April; day, 20.

6 A. What will be your age at the next birthday? Ans. 30 years.

B. Are you married or single? Ans. Married.

7 A. Is there now any insurance on your life? Ans. Yes.

C. In what other company or companies, and what amount in each? Ans. State mutual, 5,000; 7,500, Ct. Mutual; 500 Berkshire.

D. What companies or physicians have you ever consulted as to whether your life was safely insurable? The above Cos., Dr. Woodward, of Worcester, & Hartwell, of ——

67 E. What decision or opinion was given? Ans. Favorable.

F. Was any decision or opinion given that you were not safely insurable? No.

Dated at Southbridge, Mass., this 15th day of Feb'y, 1882.

Signature of the person for whose benefit the Insurance is proposed.

(Signed) CATHERINE L. EDWARDS.
(Signed) By FRANK EDWARDS.

Signature of the person whose life is proposed for insurance.

(Signed) FRANK EDWARDS.

Part 2.

Questions to be asked by the medical examiner who will fully explain the questions, write the answers himself, and witness the signature of the person examined.

1. Name (at full length) of the person whose life is proposed for insurance? Frank Edwards. Residence? Southbridge. County? Worcester. State? Mass.

2 A. Has change of climate ever been sought or advised for benefit of your health? No.

B. Have you ever resided out of the United States? No.

C. If so, where and for what period? No.

D. Was it on account of ill health? No.

3 A. Have you ever been successfully vaccinated? A. Yes.

B. What is your present health? Good.

4. Have you ever had any of the following diseases or symptoms: Apoplexy? No. Bronchitis? No. Liver complaint? No. Rheumatism? No. Paralysis? No. Spitting of blood? No. Fistula? No. Gout? No. Insanity? No. Habitual cough? No. Disease of the heart? No. Dropsy? No. Epilepsy? No. Asthma? No. Palpitation? No. Scrofula? No. Habitual headache? No. Dyspepsia? No. Aneurism? No. Syphilis? No. Fits or Convulsions? No. Colic? No. Disease of the urinary organs? No. Yellow fever? No Consumption? No. Rupture? No. Spinal disease? No. Disease of the brain? No.

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5. Have you had any other serious illness, local disease, or personal injury? No.

6. Is there, to your knowledge or belief, now existing any disorder or any infirmity or weakness tending to impair your condition? No.

7. A. Have you ever or do you not indulge in excessive use of any kind of alcoholic stimulants? No.

B. Have you ever indulged, or do you indulge, in the use of opium or narcotic stimulants in any form or manner? No.

8. Are you now or have you ever been in any military or naval service? No.

9 A. Are your parents living or deceased? Father. Age, if living? 71. State of health, if living? Good. Mother? ——. Age at death? 55. Cause of death? Erysipelas.

B. How many brothers have you had? 3. Living? 1. Age? 37. State of their health? Good. No. dead? 2. Ages? 14. Cause of death? Acquired consumption.

C. How many sisters have you had? 3. Living? 1. Age? 24. State of health? Good. No. dead? ——. Ages? 6, 12. Cause of death? Scarlet fever—croup, I think.

10 A. Have either of your parents, uncles, aunts, brothers, or sisters ever been insane or had pulmonary, scrofulous, or any constitutional or hereditary disease; if so, how many have been so affected? One brother died of acquired consumption.

B. What age have your grandparents (paternal and maternal) attained? Paternal grandfather, 80; grandmother, 36; maternal grandfather, 55; grandmother, 80.

11. Name and residence of your usual medical attendant? G. T. Bullfinch, Southbridge, Mass.

12. Name and residence of an intimate friend, who may be referred to for information? E. M. Phillips, Southbridge, Mass.

13. Are the above-named medical attendant and friend fully able to give information as to your present and general state of health? Yes.

14. Is there any fact relating to your physical condition, family history, or habits, which has not been stated in the answers to the foregoing questions, and with which the officers of the company ought to be made acquainted? No.

15. Has any answer given by you to any question in this application been made, modified, or influenced by any explanation or advice of the medical examiner or any other person? No.

16. Have you reviewed the answers to the above questions, and are you sure that they are correct? Yes.

It is hereby declared and warranted that all and several
70 the answers made to the interrogatories in this application are the full, complete, and the only answers made by the person whose life is proposed for insurance, or by the person for whose benefit the insurance is proposed; that they are correctly recorded and wholly and strictly true, and it is acknowledged and agreed by the undersigned that this application shall form a basis and become a part of the insurance contract hereby applied for, including all its provisions and conditions, and that if there be in any of the answers herein made any incorrect statements, whether made by misrepresentation, evasion, concealment, or otherwise, then any policy granted upon this application shall be null and void, and all payments thereon shall be forfeited to the company. And it is further agreed that in consideration of the surrender value promised in the policy, all right or claim to any surrender value than that so promised, whether required by the statutes of any State or not, is hereby waived and relinquished. And it is further declared by the undersigned that the party making this application has an insurable interest in the life proposed for insurance to the full amount applied for. It is understood that the Travelers' Insurance Company shall always have a lien upon the policy issued under this application for any loans or advance made on account of said policy, or for any other indebtedness on the part of the insured or beneficiary, however created. It is also understood and agreed by all the parties hereto that the insurance herein applied for shall not be binding upon the company until the required
71 premium shall have been received by the company or accredited agent thereof, during the lifetime and good health of

the person proposed. It is also agreed that no agent of the company shall have any power to waive or modify the strict performance of any or all the undertakings or conditions entered into, whether by or under this application or the policy hereby applied for, and no waiver shall be claimed or set up in justification of the non-performance of such undertakings and conditions unless such waiver is expressed in writing over the signature of the president or secretary of the company.

Dated Southbridge, this 16 day of Feb., 1882.

Signature of the person for whose benefit the insurance is proposed.

(Signed) CATHERINE L. EDWARDS.
(Signed) By FRANK EDWARDS.

Signature of the person whose life is proposed for insurance.
(Signed) FRANK EDWARDS.

The policy is endorsed as follows, to wit: "Endowment insurance policy, No. 35827. The Travelers' Insurance Company of Hartford, Conn. Insurance of life of Frank Edwards. Date, Feb'y 20th, 1882. Annual premium, $198.50. Amount insured, $5,000. Premium payable 20th day of February. Register, 9."

72 Counsel for defendant then read the deposition of Dr. Francis A. Harris. This deposition was taken in Boston, Mass., before a United States commissioner, on notice to plaintiff's attorneys, and in accordance with the Revised Statutes duly verified and signed by the witness, and is here condensed into a narrative form, with the consent of the attorneys for the plaintiff; and said deposition is as follows:

My name is Francis A. Harris; age, 30; reside in Boston, and am a physician. I hold the official position of medical examiner for the county of Suffolk; have been regularly bred to the medical profession. I graduated at Harvard college in 1866, and from the Harvard medical school in 1872, and was house surgeon at Mass. hospital one year, and subsequently one year at the university at Vienna. I have received the degree of A. B. from Harvard college, and of M. D. from Harvard medical school. Have since that time practiced my profession in Boston with the exception of a few months. Have been medical examiner for Suffolk county since July, 1877. The duties of the position require me to investigate the medical causes of death in cases where death is supposed to be the result of violence. I remember being called to view the body of a person said to be named. Frank Edwards, on the 19th June, 1882.

I was called by a messenger from the Parker House, a hotel in Boston, who said that a man had been found dead in his
73 room, and they wished me to come to the hotel. In response to that message I went, and was shown to a room where the body lay—the body said to be that of Frank Edwards—and I then made personal inquiry. I found a dead body lying on the bed. I made an external examination of the body and its surroundings.

I found that the body was lying on the outside of the bed; it was dressed, with the exception of the shoes and coat; the countenance was calm and pale; the legs were crossed at the ankles; a handkerchief was bound tightly about the head, and presented the odor of camphor; there were no marks of violence upon the body, and there was nothing special to be noticed otherwise than I have stated in its position or condition. I found upon a bureau, I think it was a bureau, which stood near the window, or possibly it was a commode or stand with a marble top, a bottle of the capacity of one ounce partly filled with what apparently was camphor water. Having completed my examination of the bottle, I ordered the body to be removed to Mr. Linkham's shop and went away. Mr. L. is the city undertaker who does the removing of bodies under my authority to await the order of friends. I think I did not remain until the body was removed. The man was a stranger to me.

While I was in the room at the Parker House there was present a waiter, whose first name is George, I think, Mr. Fitzsimons, and Mr. Harvey D. Parker. There was no one there who appeared [to] be acquainted with the man. I think I did not see this body again until 4 days later. I then went to Southbridge, Mass., in response to
74 a telegram I received from Dr. Lamb (W. D. Lamb), who requested me to come there and make a post-mortem examination. The telegram was received in New Haven; went there from New Haven. I made the autopsy on the 23d.

I went to Dr. Lamb's residence and from there we went to the cemetery. The body was brought into the hearse-house and placed on an extemporized table. It was the body which I had seen previously at the Parker House. The body was intact. There had been no post-mortem examination. The autopsy was made in the presence of Dr. Lamb and Dr. Curtis—I think his name was—of Southbridge, Mass., and I think there was another person, whose name I cannot give. It was about four o'clock in the afternoon, between 4 and 5. I remained during the entire examination. The result of the examination was as follows: As I previously stated, there were no marks of violence externally. The signs of death were present, but the color of the face was more like that of a person in the full flush of health, due to the commencement of decomposition. The internal appearances were those of congestion, very marked and excessive, and the lungs—one lung more than the other, but both were much congested, the congestion of the right lung being small in the lower portions. In fact, all the internal organs, such as liver, kidney, and spleen, were in a state of congestion. This does not refer to organs like the stomach. I made some memoranda and did preserve it at the time. I can give a detailed report of that examination if I have in my possession the record of the autopsy which I made and filed with the district attorney. The paper I now
75 have in my hand is a copy of the record of that autopsy. I made the record. I have myself compared the paper I now have; know that it is a correct copy of the original record. The result of the autopsy is as follows: The autopsy was made 96 hours after death. There was rigidity of the body. There was a

pinkish color in different portions of the body, due to the changes after death and to the thawing out of the body (which had been frozen to preserve it). There were no marks of violence externally. There were lines upon the chest, rather more marked upon the right chest, indicating the course of the superficial veins. Both eyes were flaccid and sunken. On removing the scalp dark blood flowed from one of the large canals of the scull, and the calvarium was then removed, and the scull presented no unusual appearance, and was of normal thickness. The dura mater was bulged out, especially on the left side, and its veins, as well as the longitudinal linus, were distended and full of dark blood. The dura having been removed, the pia mater was found to have serum underneath, and presented a glistening appearance, and the vessels were very full of dark fluid blood, and over the posterior part of the left hemisphere of the brain was a quantity of free blood, estimated at about two teaspoonfuls. Nothing else unusual was observable in the brain. The organs of the chest and abdomen were well preserved, some of the fat not yet having been thawed out. The diaphram was at the level of the fourth rib, on the right and fourth intercostal space on the left side. The heart was firmly contracted on the left side, and neither side contained much blood. The heart, with the exception of a
76 fenestration of the pulmonary valves, was healthy. The left lung was much congested. The right lung was also congested in the lower lobe, but there was less congestion in the upper lobe. The liver was pale on the upper surface, but section showed it was congested. The spleen and kidneys presented a moderate amount of congestion. The bladder and intestines were examined "*in situ*," and presented no unnatural appearances. The stomach was ligated at both ends and removed from the body and given to Dr. W. D. Lamb. The body was then sewn up and properly disposed for burial again. The examination closed with the giving of the stomach to Dr. Lamb. The stomach was removed with the contents entire and the stomach was placed in a glass jar and given to Dr. Lamb. We found the condition of the blood throughout the body to be dark and fluid. After this I came to Boston by train.

Subsequently I made a visit to Dr. Wood—Prof. Wood, of Harvard College, with Dr. Lamb. Dr. Lamb had with him then a jar containing a stomach, and that jar resembled the jar containing the stomach in which Edward's stomach was placed; have not any doubt it was the same jar. At the time the stomach of Edwards was put in the jar it was closed with a glass stopper, but the rest of the method of closing I am not able to state. It was done by Dr. Lamb. I think I was attending to the body, sewing up the body, &c., &c. When Dr. Lamb presented the jar to Dr. Wood it appeared to be in the same condition as when I last saw it. I remained
77 in the presence of Dr. Wood after the jar was delivered by Dr. Lamb to him. Dr. Lamb was also present. I remained at Dr. Wood's perhaps 30 minutes; am not able to state exactly. Dr. Wood or Dr. Lamb proceeded to open the jar and the stomach was removed, and one of us, I think, opened the stomach at the suggestion of Dr. Wood, *I think*. There was nothing noticed on open-

ing the stomach. My attention was called to the contents of the stomach by the odor, after it was emptied into a jar by Prof. Wood. I did also thereafter observe such an odor. Dr. Wood, without mentioning the nature of the odor, took a bottle of hydrocyanic acid, as he said, and asked me to smell of it. The contents of this bottle were solid. I smelled of this jar and then I smelled of the jar containing the contents of the stomach, and the odor of both seemed to me to resemble the oil of bitter almonds. Don't remember whether it was Dr. Lamb or myself who placed the stomach in that jar when it was first taken from the body. It was given by me into Dr. Lamb's possession. After Dr. Wood exhibited to me that bottle and the contents of that stomach he then proceeded to make some chemical tests. I think he made two. I remained during these tests, and I think I remained as long as Dr. Lamb was there. I really cannot tell what was the last thing I saw done at this time; can't tell the nature of the chemical tests, not being familiar with chemistry; don't remember in what order they occurred; don't profess to be familiar with chemistry. When I left Dr. Wood's laboratory this stomach was left with Dr. Wood
78 in a jar. The stomach was in the jar before I left and the jar was closed. I remained during these tests and until the stomach was placed in the jar. At that time Dr. Wood made a statement, which referred to the operations he had been performing—I mean the chemical operations. Dr. Wood never made any report to me different or additional. When I examined the stomach at the time of the autopsy I observed the color of the contents of the stomach, and, if I am not mistaken, they were of a brownish-red color. I think I made a statement to that effect in the record—that the contents of the stomach were about half a pint of reddish-brown fluid. The stomach was opened for the first time in the presence of Dr. Wood and Dr. Lamb. At that time the first note of the contents of the stomach was taken; have never made any examination of the body or of the stomach at any other time than the times about which I have testified; have no further personal knowledge upon the subject of the body and its conditions or the conditions of the stomach than as now given by me. When I made the autopsy the body was on the back—the body was on its back in the coffin; when I first saw the body at the Parker House it was on the back, with the legs crossed. Have no knowledge how long the body had lain in that position. The teaspoonful of free blood which I found was on the surface of the brain over the right hemisphere, right up here (placing his hand on the side of his head over the right ear); it went nearly across the head; a line drawn from the front to the back of the head, and another side to side over the head, the intersection would pass into the edge of this blood.
The bulging out of the dura mater would commence in the
79 same locality, just over this portion of the head; under the calvarium it was seen here, on top of the head, to be bulged out. At the Parker House the body was lying on the bed, with the head, I think, on a pillow. At the autopsy the head was in the same

position, slightly raised; that was the way we arranged it ourselves, that being the best for an autopsy.

From my examination of this body, and from such knowledge as I have facts connected with it that I have testified to in regard to its condition, my opinion is that the death of Frank Edwards was the result of hydrocyanic poisoning.

The duties of the medical examiner are to make an examination, as provided by statute, in such case only as where persons are supposed to come to death by violence. The method of proceeding is to repair to the place where the body lies and make personal inquiries into the cause and manner of death, and, if the medical examiner deems further examination necessary, he shall, upon being authorized by the district attorney, attorney general, mayor, or — in writing, make an examination of that body in presence of two witnesses, whose attention shall be called to the position and condition of the body, and shall reduce, or caused to be reduced, to writing the appearances there found; if he shall be of the opinion that death was caused by violence he shall file with the clerk the particulars in regard to such autopsy, with a history of the case, and likewise a copy with the district attorney. I filed with the district attorney of Suffolk county a record of the case of Frank Ed-
80 wards, and I will procure and affix hereto a copy of that record.

Q. Have you ever been paid for making this autopsy?

A. Yes.

Counsel for plaintiff objects to the answer of witness, on the ground that it does not connect the plaintiff.

Court sustains the objection for the present and counsel for the defendant excepts.

Q. By whom?

A. I received a check given *by* me by Dr. Lamb.

Counsel for plaintiff raises same objection as above; same ruling by the court, and def't's counsel excepts.

Q. Who employed you to make that autopsy?

A. Dr. Lamb, as I understood it at the time, at the request of the family.

Same ruling and exception.

The COURT: I sustain the objection for the present, and if at any time you connect Dr. Lamb with the plaintiff then it may be read. I sustain the objection to all those answers and each of them at the present time, but they may be read hereafter if you connect the plaintiff with this in any way.

I have an indistinct recollection of receiving a letter from some one signed Bullfinch, but do not remember whether he represented himself to be an agent of the Travelers' Ins. Co., making inquiries. I received a letter asking as to the post-mortem appearance. After receiving such a letter I did not give any information in regard to it. I think I replied to the letter. I don't remember whether I

declined to give any information. I think very likely I did—
81 that I did decline to give any information. I kept no copy of the letter. My present residence is 43 Hancock street, Boston, and have resided there about six years. My office is at this place and at 59 Chambers street, Boston. At the time the autopsy was taken at Southbridge the purpose of the examination was to ascertain the cause of death. It was a very careful examination. The examination embraced an examination of all the vital organs and causes of death, and nothing was omitted.

Cross-examination of Dr. HARRIS made by counsel for plaintiff.

I think my duty as medical examiner in the case of Frank Edwards completed when I issued the certificate of death and permitted the friends to remove the body for burial. I regarded my official duties ended when I had certified to the death of Frank Edwards and permitted the friends to remove the body. I was satisfied as to the cause of death when I issued that certificate.

Q. If you remember, you state now what your knowledge of the cause of death was on the 19th day of June, 1883.

Counsel objects to the question as immaterial and not proper cross-examination.

Court overrules the objecton, and counsel for defendant duly excepts.

A. You ask a question which involves certain legal technicalities. You ask me to state what my knowledge of the cause of death was. I can state what my opinion was at the time, and it was that
82 death was the result of congestion of the brain. At that time my opinion was that the congestion was caused by overexertion in a day of sudden and intense heat.

Q. Do you remember what the 19th day of June, 1882, was in respect to temperature.

Counsel for defendant objects to the question as immaterial and incompetent.

Court overrules the objection, and an exception is duly taken.

A. I remember it was a day of sudden and excessive heat; the exact range of temperature I do not know—sudden heat. I had never had any previous knowledge or acquaintance with Edwards. My impression is I was called to the hotel between half-past five and six p. m. I attended that examination in my official capacity. There is no provision in the statutes requiring me to make a record of what I noticed and information I obtained at such examination, except there is a provision in the statutes that seems to require the medical examiner after an autopsy to state the facts and circumstances within his knowledge. It is a question of construction whether that means the examination of the surroundings or the medical examination, or both. So far I have considered it as applying solely to the medical cause of death. *The* first examination was solely in the capacity of medical examiner.
83 Previous to my granting permission to the relatives I did not deem any further examination necessary in this case,

after the causes of death. Upon entering the room at the Parker House I found the body lying on the back on the bed, with the legs crossed at the ankles, a handkerchief bound about the head, which had the odor of camphor, the head raised slightly, on a pillow, I think, and the whole appearance one of composure. I cannot recollect the exact position of the hands, except there was nothing unusual or extraordinary in the position. The body was composed; that is the best way I can describe the position of the arms and legs. I would not now swear from recollection that the hands were not clasped under the head. There was no contraction of the hands, but I think the rigidity of the body was not visible; that there was no rigidity of the body at the time of the examination; that is my best recollection. I examined the vial of camphor and glass standing on the commode. There was not anything that indicated the presence of anything but camphor in that bottle or in the tumbler. I looked at them and smelled of them from that observation. I did not detect the presence of anything. I think the room in which Edwards was found was a rear room. I remember there was a window in it and it was open. I searched the room with what I considered to be ordinary and due care for the purpose of finding if there was anything indicating poison, and for the purpose of ascertaining anything that might throw light upon the cause of death. I did not
84 find anything there. I should say I was there half an hour.

There were other persons with me; there was a waiter named George, a room clerk by the name of Fitzsimons, and Harvy D. Parker, and another man, I think, but don't recall his name. I detected no odor there but the odor of camphor. That was plainly to be detected by the nose on the handkerchief and in the bottle. I detected camphor in the handkerchief which was bound about his head. I made minutes at or about the time of this view in regard to what I found there. The view is a technical term distinct from the post mortem. At the time of the view—that is, the inquiring into the causes of death and signing of the certificate—this information was obtained, and was obtained before the signing of the certificate of death. I made inquiries in connection with my official duties for the purpose of ascertaining, so far as I could, the probable cause of death. I suppose my official relations with the case were ended when I granted permission for the removal of the body; do not know whether I signed the permit on the 19th or 20th. I granted the permission to remove the body to the friends of the family who came. It should be explained, not that I granted permission to remove for burial, but that I signed a certificate as to the cause of death, upon which permission was granted by the city register after approval by the board of health. The next thing I heard of the case after the 19th or 20th of June was on the 22d June, I think. I received a telegram at New
Haven. Dr. Lamb and Dr. Curtis were present during the
85 whole period of the autopsy on the 23d day of June. Dr. Lamb or I asked Dr. Curtis to act as scribe at that examination. Dr. Curtis took minutes of that examination as it proceeded from the time when the external appearance of the body was noted

to the end of the examination. Observations were made by both of us and carefully noticed from the time when the body was uncovered until the end, and spoken of between us and the scribe. Don't know whether Dr. Curtis had in his possession the minutes of that examination at the time of the autopsy. I know they were returned by me at the time. Did not take upon the spot any such minutes myself. The statement that I have been examined in regard [to] was not taken then, but was made from memory at some time subsequent to the 23d of June. At the time of the examination of the body, on the 23d of June, I had no suspicions that death was caused by any other than natural causes. I did not detect at that time in the contents of the body or any of the organs examined by me any indication of the odor of bitter almonds. I reached Boston some time in the evening of the 23 of June; it must have been ten or 11 o'clock in the evening. I returned to my house; don't know where Dr. Lamb went. He came to Boston with me. Dr. Lamb came to breakfast with me that morning, and we went to Dr. Wood's. On this point I don't wish to be positive. Dr. Lamb did not stay with me, but my house was en route from the hotel up town to the laboratory. My impression is that I invited him to come and take breakfast with me. I know he breakfasted with me one morn-

86 ing. We went on the morning of the 24th of June, somewhere from 10 to 11 o'clock. We were at Prof. Wood's from one-half an hour to an hour. I should say I am not an expert in chemistry. Do not understand the methods of detecting the presence of poison by experiments, and such knowledge as I had in regard to what was found there, was what was stated to me by Dr. Wood. In my description of the appearance of Edwards' body I have described everything that comes to my memory to-day. I made a careful examination of the organs, from the brain throughout the body, with the exception I did not at that time open or examine the stomach or its contents. I have described in this deposition all that I observed at the time I made the view of the body on the 19th of June, with the exception of finding of property among the effects of deceased. I have no personal knowledge of my own that hydrocyanic acid was found in the stomach examined on the 24th of June. I have not any knowledge that would enable me to state the amount found or how it came there. Assuming that such acid was found there, I cannot tell from any observation or knowledge that I have of the case whether it came there by voluntary taking or by accident. Assuming that acid was in Edwards' stomach, I have not any knowledge as to the form *as to* which it was taken—I mean, I have no personal knowledge.

This closed the cross-examination as made by the counsel for plaintiff.

87 Counsel for defendant here read questions and answers as given by Dr. Harris, which *was* admitted by plaintiff's counsel.

Q. I will ask, Doctor, so far as any personal direction was concerned, and so far as you have kept any record of what you did on

the 23d or subsequently, under whose personal direction were you acting?

A. What I did on the 23d or 24th of June I did at the request of Dr. Lamb.

Here was read by defendant's counsel the redirect examination of Dr. HARRIS, taken as before stated:

There was no section made of the body of Frank Edwards on the 19th of June. The day I first saw his body Dr. Lamb was not at the Parker House, on the 19th of June. I did not on the 19th of June entertain any suspicion that death was caused by poison further than I may say this: When I go to examine any body where death is supposed to be caused by violence I look about to see what there is, but when I had finished I had no suspicion. It is not my duty under any law of the State of Massachusetts to include any special matter in my report. The certificate which I issued on the 20th, or thereabouts, is called certificate of burial. The purpose of that certificate under the law is that the body may be prepared and removed for the purpose of burial or to be given for dissection. It certifies the cause of death, to the best of the doctor's knowledge and belief.

88 At the time I made this first certificate on the 20th I reported the cause of death to be congestion of the brain. I reported that to be the cause of death on the ground of the history of the case, the appearance of the body, and from other extraneous facts, and the absence of other causes of death, as far as I could learn about them. I had not at that time made a section of the body. I had not at that time any of the same knowledge derived subsequently from the section of the body.

Q. Now, you assign congestion of the brain as the cause of death. Is that a cause or an effect?

A. It is both an effect and a cause—that is to say, a person may have congestion of the brain as an effect from over-indulgence in alcohol, and the effect of that congestion may cause death by acting on the brain, so as to injure the nerve centres which control the vital forces, excessive heat, alcoholism, violent motion, and also some poisons. A very large number of poisons will produce congestion of the brain—narcotic poisons I mean. For example, opium, alcohol, and all of that class. I think there are others. Hydrocyanic acid is one of the narcotic poisons, I think, and I think arsenic makes congestion, and then poisons like stramonium. It was upon the basis of the second examination and of what I had learned and been told by Dr. Wood that I gave my opinion that Frank Edwards died from the effect of hydrocyanic acid. I believe Dr. Curtis remained during the section of that body at Southbridge on the 23d of June, 1882. I believe the stomach was removed in his presence.

89 All that I have described as being done with the stomach, as far as putting it into the jar, was done in his presence. I think it was said in Dr. Curtis' presence as to the purpose for which the stomach was removed. It was removed for the purpose of chemical examination and for detection of any poison if it should be there. There was not to my knowledge anything introduced into

that stomach at the time of the section after the stomach was taken from the body until it was sealed up. I think nothing of that sort could have been done without my knowledge. I was present during the whole time and assisted at the section. When Dr. Lamb returned to Boston with me that night he had with him a package done up in brown paper, as I recollect it; it was a brown paper package containing what appeared to be a jar. He brought that package to Boston, as far as I know, and when he came to my house the next morning he had a package with him. It appeared to be the same package he had the night before. I noticed he had a package. There was nothing to attract my attention. After we left my house we went to the college laboratory. Dr. Lamb had with him on the way this package, and the package that was subsequently opened in Dr. Wood's presence.

Recross-examination by counsel for the plaintiff:

The autopsy was on the 23d of June, and the stomach was examined the next day, and I found the stomach apparently healthy. The condition of the membrane inside was smooth and even and free from any inflammation. Did not specially examine the
90 finger nails of Mr. Edwards, and do not remember what their appearance was. If my recollection serves me right we found in the stomach by estimate about half a pint of substance. On the 19th of June I examined the pockets of Mr. Edwards' clothing and found there a certain sum of money, watch and chain, some checks and notes, and other valuables. The amount I can't state exactly, but the amount was considerable, and for that reason instead of taking them to my own house I put them in charge of Mr. Parker, who had a safe in which he could put them. I did not find anything in his clothing indicating the presence of poisoning; no bottle or paper. I remember smelling of a bottle at the laboratory on the 24th of June, which was presented to me by Dr. Wood. I smelled of it. I smelled first of the bottle containing the contents of the stomach, and afterwards of the bottle offered me by Dr. Wood, for the purpose of comparison. This smelling after awhile made me dizzy, a sensation of falling. I can't describe the sensation. I never experienced it before. It was like the presence of some absorbed drug—after I had smelled of the vapor from the bottles; did not know what the contents of the bottle were, except as told by Dr. Wood. Have not seen a poisoning by hydrocyanic acid, but I have of poisoning by cyanide of potassium in 1872. I did not make the autopsy. It was a patient at the hospital where I was house physician. I remember the bright vermillion color of the lungs made an impression on my memory. They resembled the color of the lungs of a new-born child.
91 I found at the autopsy a quantity of blood, which I stated to be about two teaspoonfuls, and it was effused blood; don't know whether it was effused before death. I should further wish to explain this: I have testified that the blood was fluid throughout the body, and the blood which I found about the head of course came from blood veins that had been ruptured. I do not think I

ruptured any veins in my operation; but am not so positive as to be able to swear to it; don't think cyanide of potassium is a corrosive poison, and since my last examination here I have endeavored to ascertain into just what class of poisons cyanide of potassium comes, and it is variously classed as narcotic, depressant, and in another artificial classification which I don't remember, but I have not found it classed with the corrosives. I concluded at the examination on the 23d of June that the cause of the death of Mr. Edwards was congestion of the brain. The record made by me was written as of the day when it bears date.

Here follows the record as made by Dr. Harris and referred to by him in the foregoing deposition:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

To the district attorney for the Suffolk district:

In conformity with section 9 of chapter 200 of the acts of the year eighteen hundred and seventy-seven, I make herewith a
92 record of an autopsy of the body of Frank Edwards, aged 32 years, found lying at the Parker House, Boston, Mass., and supposed to have come to death by violence. The said autopsy was made at five o'clock in the afternoon of Friday, the 23 day of June, A. D. 1882, by authority of the family of Edwards and in the presence of Dr. W. D. Lamb, residing at Southbridge, and Dr. Curtis, residing at Southbridge, witnesses. Autopsy ninety-six hours after death; rigor was present in the knees and shoulders, but wanting in the elbows. The body presented no marks of violence. The face had a slightly pinkish color, not unlike the flush of health. There was no lividity in the dependent portions of the body. Cutis anserine was observed on the flanks and groin, and some parts of the chest presented a pinkish color, due probably to the thawing out of the body, which had been frozen to preserve it. On the right breast pink lines indicated the course of the superficial veins. The eyes were flaccid and sunken. On removing the scalp dark blood flowed from one of the large canals (for the passage of blood vessels). On removing the calvarium, which presented no unusual appearance and was of normal thickness, the dura mater was seen to be bulged out, especially on the left side, and its veins as well as the longitudinal sinus were very full and distended with dark blood. The dura being removed a moderate amount of serum was found beneath the pia, giving it a glistening appearance, and the vessels of the pia were distended with blood which was dark and fluid. Over the posterior part of the left hemisphere was a quantity of free blood (by estimate two teaspoonfuls). The ventricles contained only the
93 normal amount of fluid. The puncta cruenta were clearly marked. Otherwise the brain and spinal cord presented nothing unusual. The organs of the chest and abdomen were in an excellent state of preservation, and the fat on the abdomen and on the omentum had not wholly thawed. The diaphram was at the level of the fourth rib on the right and fourth intercostal space on the

left side. The left chest cavity was perfectly dry and the right contained (by estimate) two ounces of blood which had run in from the veins in the neck, which had been wounded by removing the sternum. The heart was found firmly contracted on the left side and neither side contained much blood. The organ itself, aside from a fenestration of the pulmonary valves, was apparently normal.

The left lung was very much congested, being loaded with dark fluid blood, but was otherwise healthy. The right lung was also much congested in its lower portion and rather less so in its upper lobe and was also healthy. The liver was rather pale in its upper surface, but on section was found to be congested, the congestion being most marked in the lower right lobe. The spleen and kidneys, aside from a moderate amount of congestion, were apparently healthy. The bladder and intestines were examined "*in situ*," and presented nothing unusual. The stomach was ligated at both ends and removed with its contents entire and placed in a glass jar, and was given in charge of Dr. W. D. Lamb. On the following day what was apparently the same stomach was opened by me in presence of
94 Dr. Lamb and a chemist. The stomach was apparently healthy, the mucous membrane being smooth, even, and free from all echemoses or traces of inflammation. The contents were (by estimate) about half a pint of reddish brown fluid, having an odor not unlike that of oil of bitter almonds. Otherwise the stomach presented nothing unusual in appearance to the eye. The stomach was given by Dr. Lamb to the chemist, Dr. E. S. Wood, for the purpose of analysis. It should be stated that the blood throughout the body was, in general, dark and fluid, and I further declare it to be my opinion that the said Frank Edwards came to his death from congestion of the brain and lungs, caused by ingestion of hydrocyanic acid in some form.

Dated at Boston, in the county of Suffolk, this tenth day of July, 1882.

FRANCIS A. HARRIS,
Medical Examiner.

Defendant's counsel here read the deposition of Prof. Edward S. Wood, which was duly taken before a United States commissioner at Boston, duly signed by Prof. Wood, and certified to by U. S. commissioner, and filed with the clerk of this court, and is as follows:

My name is Edward S. Wood; place of residence, Cambridge; age, 37; am professor of chemistry at Harvard College, Boston, and have been since 1871; assistant professor for five years; after that full professor; received my professional education at Harvard Medical School; graduated in spring of 1871. I graduated at the college in 1867; have
95 received the college degree of B. A., M. A., and M. D. I took a full course and an extra course at the Harvard Medical School; am a member of the Mass. Medical Society; have devoted special attention during most of those years to medical chemistry, physiological chemistry, analysis of animal fluids, toxicology, and sanitary chemistry; am familiar with chemical examinations for poisons; it is largely my business; have made a large number of

chemical analyses in medical legal cases; it is part of my duty to teach the subject of poisons in every way, their action upon the body as well as chemically, and the detection of poisons in animal fluids; have attended a great many trials for murder by poison; am familiar with the action of poisons upon the human system. I have studied in Berlin and Vienna, and those studies were prosecuted abroad while I was assistant professor. I am acquainted with Dr. Francis A. Harris, medical examiner for the county of Suffolk. I received from Dr. W. D. Lamb, in the presence of Dr. Harris, on June 24th, 1882, an unopened stomach, which was said to be the stomach of Frank Edwards. Dr. Harris was present and within hearing.

Q. Please to state the external appearance of this stomach.

Counsel for plaintiff objects to this question.

Court sustains the objection and counsel for defendant excepts to the ruling.

[A.] I was informed on what day Frank Edwards died, but I made no note of it, and I don't remember; I think four or five days. At that time I was requested by one of these gentlemen present and in the hearing of the other to examine this
96 stomach for poison. Before I proceeded to make a chemical analysis of the contents of the stomach there was nothing about it which especially attracted my attention, except that it was unopened. I do not usually receive a stomach unopened, because that operation is usally performed at the post-mortem examination. Immediately upon receiving the stomach I removed it from the bottle and placed it in a large vessel suitable for the purpose, and then requested Dr. Harris to open it and make the pathological examination. Both Dr. Harris and Dr. Lamb had remained in the room up to the time. I first met them at the house of Dr. Harris, on Hancock street, in response to a telegram received the day before, but we went at once to my laboratory after we met. I have no remembrance of receiving the stomach at the house. Dr. Lamb kept it till we got to the laboratory on North Grove street. We proceeded directly there, and the stomach was taken by Dr. Lamb with you. After we arrived at the laboratory the stomach was opened in my presence by Dr. Harris, and the contents, a small amount of semi-fluid substance, taken out, and, as is my usual custom and my duty, the first thing which I did was to observe its appearance and properties; therefore, I smelled of it, and at once perceived the odor of prussic acid. Dr. Lamb and Dr. Harris was present when this odor was present. It was subject of remark between us. I at once obtained a suitable bottle, tightly stoppered, and requested Dr. Harris to pour the contents into it and quickly stop it, in order to prevent the escape of the acid. I then prepared to apply the tests. The first test which I applied we call the silver test. I exposed a drop of nitrate of
97 silver solution to the action of the vapor rising from the contents of the stomach in the bottle. It very quickly became cloudy, the nitrate of silver solution did, and examining its appearance

under the microscope I discovered cyanide of silver, and that is evidence of the presence of hydrocyanic acid. Everything occurred in the presence of both Dr. Harris and Dr. Lamb. I next exposed in the same way a drop of sulphate of ammonium solution, which combines with prussic acid to form sulpho-cyanide of ammonium, and the presence of the sulpho-cyanide of ammonium was detected in this case by testing it with a little sesquichloride of iron, which gave the blood-red sulpho-cyanide of iron. This is another test for the presence of hydrocyanic acid. I then proceeded with what we call the iron test. In the same manner as before a drop of the solution of mixed sulphates of iron, called ferreous sulphate and ferris sulphate, was exposed to the vapor arising from the contents. They form, with prussic acid, the blue pigment known by the name of Prussian blue, and the Prussian blue was formed in this case, so that hydrocyanic acid was here indicated in the vapor arising from this stomach by the odor of the contents of the stomach, and by the result of the silver test, and the sulphur test, and the result of any one of these alone would prove the existence and presence of prussic acid, either free or combined with some alkali.

These tests are familiar to all toxicologists and chemists,
98 and are considered proof positive, and the physiological test was obtained by two persons by smelling—by Dr. Harris and myself. It made us both dizzy, so that Dr. Harris had to sit down in a chair. The next thing I did after Dr. Harris had finished his examination of the stomach was to place it in a bottle and seal it up; can't say how long Dr. Lamb and Dr. Haris remained after that; they went away together. I locked the stomach up under lock and key in a private cabinet. At that time I made a verbal report to Dr. Harris that hydrocyanic acid was present. I never had anything more to do with this stomach until March 26th, 1883; then I delivered it back to Dr. William D. Lamb in my laboratory in Cambridge—my private laboratory. I never made any quantitative analysis of that stomach; am not able to form any judgment of the amount of acid present in that stomach. I could not give any estimate whatever in the way of figures; I should simply guess a large amount; that would be all I could say; it is a matter of surmises; did not ascertain whether hydrocyanic acid in that stomach was free or in combination by that vapor. The fact that it must have been used in combination with other substances would not have affected the character of the vapor if it was in the form of a soluble body, as cyanide of potassium; it was in a soluble body, or else we could not have perceived any odor.

Q. Supposing that you have been presented with a stomach which has been taken from a body and the following is an account of the autopsy: "96 hours after death rigor was present in the knees and
99 shoulders but wanting in the elbows. The body presented no signs of violence. The face had a slightly pinkish color, not unlike the flush of health. There was no rigidity in the dependent portions of the body. Cutis ancipine was observed on the flanks. The flanks and groin and some parts of the chest presented a pinkish color, due, probably, to the thawing of the body, which

had been frozen to preserve it. On the right breast pink lines indicated the course of the superficial veins. The eyes were flaccid and sunenk. On removing the scalp dark blood flowed from one of the large canals (for the passage of blood vessels). On removing the calvarium, which presented no unusual appearance and was of normal thickness, the dura mater was seen to be bulged out on the left side and the veins, as well as the longitudinal sinus, were very full and distended with dark blood. The dura being removed, a moderate amount of serum was found beneath the pia giving it a glistening appearance, and the vessels of the pia were distended with blood which was dark and fluid. Over the posterior part of the left hemisphere was a quantity of free blood (by estimate two teaspoonfuls). The ventricles contained only the normal amount of fluid. The pincta cruenta were clearly marked, otherwise the brain and spinal cord presented nothing unusual. The organs of the chest and abdomen were in an excellent state of preservation, and the fat on the abdomen and of the omentum had not wholly thawed. The diaphragm was at the level of the fourth rib on the right and fourth intercostal space on the left side. The left-chest cavity was perfectly dry and the right contained (by estimate) two ounces of blood, which had run in from the
100 veins in the neck, which had been wounded in removing the sternum. The heart was found firmly contracted on the left side, and neither side contained much blood. The organ itself, aside from a fenestration of the pulmonary valves, was apparently normal. The left lung was very much congested, being loaded with dark fluid blood, but was otherwise healthy. The right lung was also much congested in the lower portion, and rather less so in its upper lobe, and was also healthy. The liver was also pale on its upper surface but on section was found to be congested, the congestion being most marked in the lower right lobe. The spleen and kidneys, aside from a moderate amount of congestion, were apparently healthy. The bladder and intestines were examined *in situ* and presented nothing unusual, and if your examination of the stomach has shown the result which you have testified to, what should you think the cause of the death of the person was?

A. Hydrocyanic acid poisoning. I should have no doubt of it whatever from the fact [that] hydrocyanic acid was found.

Q. State, if you please, how rapidly that poison usually works.

A. The symptoms usually begin in less than two minutes, and death takes place within an hour. It is exceedingly volatile; it is a gas. It is so volatile that a preparation of hydrocyanic acid always loses in strength as soon as the bottle is unsealed. In cases of prussic-acid poisoning, vapor tests will not usually discover it after four or five days. The longest period after death that prussic acid has been detected is 23 days, and the next seventeen. But
101 ordinarily after eight or nine days it can only be detected by distillation and not by such tests as I [have] detailed. I have received compensation for that analysis and it came from Dr. Lamb.

The cross-examination of Dr. WOOD is as follows:

Was not personally acquainted with Frank Edwards; had never seen him to my knowledge, either before or after his death; do not know of my own knowledge that the stomach I examined in June, 1882, was the stomach of Frank Edwards. At the time of the examination I had no knowledge, personally, of his condition, health, etc., etc.

The examination was made by me between 11 and 1 o'clock; about 11 o'clock; have stated fully and carefully all the appearances of the stomach that I examined that time; the stomach was ligated above and below—near the upper and lower orifice. The stomach I examined was the ordinary size of the human stomach; cannot give it in inches. A general idea of its size was long diameter 6 to 8 inches and short diameter 4 to 5 inches, the upper orifice entering the stomach at the larger end and the lower orifice extending down from the right-hand end to the smaller end of the stomach, the stomach being more or less pear-shaped. That is the description of an ordinary stomach and not of any one in particular; only made a casual examination of the membranes of the stomach. It is not a part of my duty, nor when a pathologist was present; observed nothing peculiar, except a slight fullness of the blood vessels, possibly; observed nothing abnormal in the internal
102 membranes of the stomach; no lesions, no wounds, nor anything of that kind. The term prussic acid is synonymous with hydrocyanic acid, cyanhydric acid, and hydrocyanide, and are used by scientific men. The latter are purely chemical terms. The two terms used in medicine are prussic acid and hydrocyanic acid. Prussic acid in its pure state is called anhydrous or free from water, and is a gas; it is a liquid, colorless gas, volatile and inflammable, and so volatile that it is always looked upon as a gas, but it can be compressed into a liquid. It is equally poisonous when applied externally to wounds or taken into the stomach, and still more rapidly if inhaled into the lungs; it diffuses itself through the body with great rapidity. The acid is composed of the atoms [of] hydrogen, carbon, and nitrogen. The proportion is one atom of each. The poisonous element in this body is a compound of carbon and nitrogen, called cyanogen; it is a production of vegetable; it is always considered among the inorganic substances in chemistry, and the organic also. Hydrocyanic acid is classified with hydrochloric acid, one of the hologens; it is a narcotic poison, and convulsive poison also; they are quite numerous. Hydrocyanic acid is known to possess medicinal properties; it is among the common drugs of our U. S. pharmacopœia; it is employed by physicians in practice; there is a variety of diseases and purposes to which it is applied as a remedy. I did not determine the amount found in the stomach I examined; made no tests except the vapor test; made no further examination chemically of the stomach or its contents; the
103 stomach naturally, in the process of digestion, contains acids, and these acids act more or less upon the substances taken into the stomach; they help digest articles of food. Except the fact

of the presence of hydrocyanic acid in the stomach there is nothing in the details of the post-mortem examination of the body that convinced me that the death was caused by that acid; did not make any examination for the purpose of determining how the acid I found came into the stomach; did not make any examination of any blood in connection with this stomach. I had no blood to examine.

Witness was re-examined by counsel for defendant:

The unopened stomach that I received from Dr. Lamb in the presence of Dr. Harris on 24th June, 1882, and said to be the stomach of Frank Edwards, was presented to me in a bottle. The bottle was a wide-mouthed glass-stoppered bottle—about a quart bottle. It was not sealed, but was handed to me by Dr. Lamb in person. The bottle was wrapped up, of course, in ordinary wrapping paper and tied with a string in the ordinary way. When I removed the stomach from the bottle it was ligated at both ends, both openings ligated so that none of the contents had escaped into the bottle from the inside of the stomach. When the bottle was first opened by Dr. Harris the first thing which attracted my attention was the color of the contents of the stomach and after that the odor. I observed first, of course, the general appearance of the contents of the stomach and then looked at the membrane, but observed nothing unusual to attract my attention, so far as
104 the membrane was concerned. I noticed the odor of hydrocyanic acid very decided. Hydrocyanic acid has no effect upon the contents of the stomach, so far as affecting the color is concerned. The acids in the stomach which are there naturally for the purposes of digestion are not harmful to the stomach. The acid in the stomach there naturally is to effect and assist digestion, part of the natural composition of the gastric juices. It is possible and not a matter of difficulty to distinguish acid in the stomach from dydrocyanic acid or prussic acid. Hydrocyanic acid does not result from the combining of food with any of these acids existing in the stomach to aid digestion. At the time I commenced the examination of the contents of this stomach I exhibited to Dr. Harris to smell *of* a bottle which contained cyanide of potassium, from which the odor of prussic acid is evolved.

This deposition was duly signed by Dr. Wood and duly certified to by the U. S. commissioner, and by him forwarded to the clerk of this court and is now on file in his office.

Charles H. Porter, M. D., a witness for the defendant, testified as follows:

I reside in Albany, and have for 20-odd years; am a physician and chemist; my age is 49 years; have practiced my profession about 25 years; graduated at the scientific school of Yale College and Albany Medical College; have had experience in regard to
poisons; have had experience in regard to cyanide of potas-
105 sium or prussic acid; heard Prof. Wood's deposition read this morning, and have read Dr. Harris' certificate annexed to his

deposition. Assuming the facts to be as stated in Prof. Wood's deposition and Dr. Harris' certificate, I think the cause of Frank Edwards' death was hydrocyanic acid or cyanide. The word "congestion," as used, means "fullness." Congestion of the brain or lungs means a fullness of the vessels of the brain or lungs or heart. The cause may arise from various causes. Congestion of the brain may be caused by intoxication, by disease, or by exposure to heat; those are the chief causes; the immediate causes might be the prevention of the return of the blood to the heart and lungs.

Q. Assuming there was a large quantity of cyanide of potassium taken into the stomach, what effect would it have upon the body?

A. It would cause death in a few moments—in a minute or two; might be delayed for a considerable number of minutes, 10 or 20 or more. There have been fatal cases where the patient has lived several hours. In all cities, I suppose, cyanide of potassium can readily be purchased. It is an acid used largely by photographers; cyanide of potassium is purchased, so far as I know, in solid form. It can be taken in solution dissolved in water. A few grains would be sufficient to destroy the life of a man 30 years of age. It is very soluble in water; a teaspoonful of water would dissolve 10
106 or 15 grains. The odor of hydrocyanic acid is commonly spoken of as the odor of bitter almonds, which also contains it. I think the ordor of camphor would mask or conceal the odor of cyanide of potassium to a certain extent, possibly altogether, depending on the amount of the two present. The word "ingestion" means taken in. Ingestion into the stomach would mean taken into the stomach.

To the court the witness said: Death caused by the poisoning of this acid would be painless; I think that the final result would be. At first the person might have during the few moments of life great difficulty of breathing, and in consequence disturbance—unpleasant feelings; afterwards he might have (occasionally do) convulsions, but very quickly the person would become unconscious, and those struggles which I have referred to (difficulty of breathing and possibly convulsions) would not then be appreciated by the person. There would be nothing to indicate on his countenance or in the position of his body in any way whether or not he came to his death by poisoning of this acid.

To the counsel for defendant witness further testified: No external observation would disclose this poisoning.

Q. Assuming that Frank Edwards was a young man 30 years of age; that he had never been ill in his life; that he went into a room in a public hotel in Boston, 60 miles from his home; that he went into a room, sent [for] and obtained some camphor, saying that he had a headache; that he locked the door on the inside, took off
107 his coat and shoes, and laid himself on the bed, and two hours after that was found dead, and apparently no external sign of violence about him, and the window open and no evidence or appearance of any one else having been in the room; that subsequently on a post-mortem examination there was found in his stomach

sufficient prussic acid in some form so as to make the person smelling of it dizzy, so that he sat down, what would those facts indicate to your mind the mode in which he came to his death?

A. In my opinion death was caused by prussic acid.

Cross-ex'd by Mr. COGSWELL, Jr.:

Hydrocyanic acid is one of the most rapid poisons known. Very often the person taking it drops right down senseless. One of the appearances often is that the eye is dilated; there is a froth at the mouth sometimes; sometimes the hands are clenched and sometimes a rigidity of the body. The odor of hydrocyanic acid is occasionally one of the most marked features, but it is not by any means general. It is a very common feature. All the features I have stated are common, not always present. I think the odor would not be manifest in the brain and other portions of the body in an autopsy taken 96 hours after death. If hydrocyanic acid to any considerable extent was present in the stomach, there might be odor manifest, but I should not be inclined to think so, so long after death; don't think the color of the blood so long after death would be a light-red color. It often is, at first, but I think after a considerable time has passed the blood becomes darker; nothing absolutely certain about the appearance of that body after death
108 that leads me to suppose his death was caused by hydrocyanic acid. The general congestion, fullness of blood-vessels, especially in the venous system, which tends to cause me to believe his death was caused by hydrocyanic acid. That is not the invariable effect of hydrocyanic poison, but almost so. It might have been caused by other means; might have been caused by heat or over exertion. Hydrocyanic acid is found in a number of substances used as medicines; don't know of any other than cyanide of potassium in common use. Hydrocyanic ether is very little used. Hydrocyanic acid is also present in kirschwasser and maraschino, and I think in Narceaux; very possibly in some other substances or some other water, or cordials; have no doubt these are found at hotels and restaurants; can't tell bromide of potassium from cyanide of potassium by simply looking at them in the two vials you now show me. Bromide of potassium is a very common remedy for headache. If a person had a headache he might go to a drug store and ask for bromide of potassium, and if he asked for something for a headache the druggist might give him bromide of potassium; am familiar, in a general way, with the statistics in regard to prussic-acid poisoning, but I have not looked at them for years. Simpson is a reputable authority, so far as I know; I have no reason to think otherwise; Boehm is good; do not recollect what proportion of ascertained cases of poisoning by hydrocyanic acid have been occasioned by medical mistakes; it is not a very great proportion.

Counsel for plaintiff here reads from a book in substance that
109 from a collection of carefully recorded cases of poisoning by prussic acid from the literature of the last 20 years of 35 cases 13 were medicinal poisonings, 11 were suicidal, 6 were accidental, and 5 were designated as murderous, and witness said: I think

likely that is correct; I know nothing to the contrary; I know nothing about the statistics in that book, but I should think very likely the figures as given were not out of the way.

Redirect examination by defendant's counsel:

If prussic acid is given as a medicine at all it is in doses from one to two or three drops of what is commonly known as the medicinal acid, which is very dilute; it contains about two per cent. of the real acid. In order to destroy life a man would have to take of that medicinal acid one-half of a drachm or a teaspoonful. Cyanide of potassium is not ordinarily sold in drug stores or put up by physicians so as to resemble bromide of potassium. It is a different looking substance; don't remember to have ever seen it in a drug store—any cyanide of potassium which could be reasonably mistaken for bromide of potassium. Bromide is usually presented in the form of a more or less coarse powder, while cyanide of potassium is usually (almost universally) found in the form of large hard lumps; it could, of course be powdered, but it is commonly found in that shape. Bromide of potassium might be given by a physician in the form of a powder, which can be taken without water. There is no odor at all from bromide of potassium. The quantity of prussic acid found in the waters referred to by
110 plaintiff's counsel is exceedingly small. In order to destroy life a man would have to take into his stomach a great many ounces—I think a great quantity. I do not believe ½ a pint or a pint would contain enough prussic acid to destroy life; am not positive as to the exact quantity; it must be small. There is prussic acid in peach leaves, and in the stones which are contained in peaches. A man would have to eat a very large quantity of peach leaves to destroy his life. It is not uncommon that persons intending to take their own life use some form of prussic acid.

The witness desired to modify one answer slightly, and that in regard to the quantity necessary to be taken as a fatal dose.

I stated maybe ½ a pint or a pint: I was thinking more of the cordials and liqueurs like maraschino, but of the cherry laurel water which was mentioned. I am not certain how much prussic acid it does contain; it might contain a considerable quantity.

Recross-examined by Mr. COGSWELL, Jr.:

Granular cyanide may be mentioned in the dispensatories. I don't happen to have seen it in shops. I would not say it was not kept in drug stores. I think possibly there might be in those cordials a sufficient quantity of prussic acid to answer the test made by Dr. Wood: don't know whether Chapins is a well-recognized authority. I remember it very well. I think very likely he says one part of hydrocyanic acid to
111 50,000 would yield the Prussian-blue test. I don't remember whether he does say so, and I think very likely he says one part in 4,000,000 would yield the iron test, and probably says

one part in 350,000 would yield the silver test. A very minute quantity would without doubt yield all the tests specified by Dr. Wood. The syrup of wild cherry does contain a quantity of hydrocyanic acid, and I should think very likely would be sufficient to answer these tests. I don't think the quantity of hydrocyanic acid in these liqueurs and waters would depend upon the purity of the liqueurs. I don't know why it should. I have no reason to think that if they were inferior they would be apt to contain more.

Redirect examination by counsel for defendant:

The liqueurs are drank quite largely. I never heard of anybody being poisoned by them or the waters; don't remember any account in the books of liqueur poisoning; I think I have of the waters. Assuming there was prussic acid in the stomach examined by Dr. Wood, the odor there appearing, and the effect it had upon the persons who smelled of it, I would think that that fluid must have contained a large quantity of prussic acid, without being able to define exactly what I mean by a "large quantity." I think the quantity must have been very much in excess of a medicinal dose.

Recross-examined by Mr. COGSWELL:

Referring to the question as to the proportion of thirteen out of thirty-five cases of medicinal mistakes, I mean from mistake
112 in prescribing or in the compounding of the medicine—that is, taking one thing for another, or taking too much.

Re-examined by counsel for defendant:

I don't think drinking these waters or smelling of them would make a man dizzy or any sensible effect produced. Even if found after death there would not be any smell of bitter almonds or sufficient to make a man dizzy—not from the quantity found in this man's stomach.

To Mr. Cogswell witness says: That would depend upon how much hydrocyanic acid there happened to be in the kirschwasser or liqueur. If it happened by some mistake to contain an undue proportion of hydrocyanic acid [it] would answer those tests and produce that smell. However it got into the stomach, if it was there, it would undoubtedly answer those tests.

D. H. PHILLIPS, a witness for defendant, did testify as follows:

I reside at Southbridge, Mass., and have lived there 14 years. Southbridge is distant from Hartford, Conn., 30 to 40 miles, and there is frequent railroad communication and railroad facilities between the two places. Southbridge is 60 miles from Boston. My business at Southbridge is insurance agent—chiefly fire. I was local agent of the Travelers' Insurance Co. first six months of 1882, in June and July. About all my duties with reference to the life department at Southbridge were to receive applications and to collect premiums. I knew Frank Edwards in his lifetime; had
113 known him during my residence in town up to the time of his

death. He came to me and desired me to make an application for a policy in the Travelers' Ins. Co., and in pursuance of that request I made out the policy. I actually delivered the policy to him on the 24th of May, 1882. The Travelers' Ins. Co. in its life department, so far as I know, never issued to him any other than the policy of insurance I now show you, "Exhibit A." Frank Edwards was a merchant, a book-keeper of William Edwards' Sons and Edwards Grain Co. At the time I heard of Edwards' death I had not reported this policy to the company. I remember meeting Mr. Edwards and Mr. Bartholomew on the street the next day after I heard of the death of Frank Edwards. It was before the funeral. I met them the next day on Main street. I was going to Hartford the next day on business connected with my fire business, not for the defendant, and on my own business. At that time I had not any knowledge of the particulars of Frank Edwards' death. The blanks I brought home I delivered either to S. K. Edwards or to Mr. Bartholomew. Mr. Bartholomew lived in Southbridge.

Witness is shown the affidavits, &c., which plaintiff read in evidence, and states that he can't fix the date when he saw them. I don't remember when I received them; am not able to say from whom I received them; whether from Mr. Bartholomew or from Mr. Edwards. When they were brought to me I returned them to Mr. Edwards. I told him that that they were incomplete; that they would be required to give an affidavit of Medical Examiner Harris, or something to that effect. I left the papers with him. I did
114 not give the company any notice or information that these papers had been handed to me; can't say when I did next see these papers. A letter accompanying them enables me to fix the date when I next saw them. It was some time in February, 1883. I was away at the time these blanks and papers were left. On my return I found them at my office and immediately forwarded them to the company. I found with them a letter purporting to be written by S. K. Edwards. It is dated January 29th, 1883. I received a reply to the communication which I sent them of Feb., 1883. I handed the letter to Mr. Bartholomew or Mr. Edwards, my memory will not allow me to say which. After that, so far as I know, neither S. K. Edwards or Mr. Bartholomew or any one in behalf of plaintiff did anything in reference to this affidavit.

Cross-ex'd by Mr. COGSWELL:

Have been an agent of the Travelers' Ins. Co. 10 or more years, both in its accident and in its life department. I took the applications. I didn't issue any policies; I simply took the application. I take the application and send it to the company. The policy is sent back to me and requires my signature upon the receipt, before it can be delivered to anybody and before it becomes a contract obligatory upon anybody. I have to sign the receipt and deliver the policy. I also insure in the accident department; have known Frank Edwards some 14 years; been intimately acquainted with him; seen him every day or nearly so; not so much in social life

as in business life. Mr. Edwards was insured in the accident
115 department of this Co., and had been for one or two years, perhaps. I recollect, after the news of Frank Edwards' death was received, I had a conversation, which Mr. Bartholomew has testified to, and on that day I did go to Hartford, and I did tell the company the fact of the death of Edwards. The company gave me some blanks which I brought home and delivered to Mr. Bartholomew. I don't remember the conversation that when they were finished they were to be brought and delivered to me. They were brought and delivered to me not long afterward; can't tell the time; don't remember when I returned them to Stephen Edwards. I say, when they were brought back and delivered to me they were filled up, and within a few days. It was some months before I gave these proofs to Mr. Stephen Edwards. I shouldn't say it was as late as January. According to my best recollection, it was some time in November or first of December. Each one of these affidavits was filled up. In the ordinary course of business, I should have sent these proofs to the company and as soon as convenient. I did not send these proofs to the company for some reason or other.

Q. My question is you neglected to send them to the company?

Counsel for the defendant objected to the question upon the ground that it was immaterial and incompetent, and there is no allegation of waiver in the plaintiff's complaint, and that the acts of Mr. Phillips were not binding upon the company; that there is no evidence before the court that Mr. Phillips was anything more than a special agent.

The court overruled the objection of defendant, and held
116 that the service of these affidavits upon Mr. Phillips was sufficient service upon company.

Counsel for defendant duly excepted to the ruling.

[Q.] At the time these papers were delivered to you nothing was said by Mr. Bartholomew or to Mr. Edwards as to the necessity of any additional proof?

[A.] Not at the immediate time.

Redirect examination by def't's counsel:

This Edwards policy is the only policy I ever obtained from the life department of the Travelers' Ins. Co. As to the conversation had with Mr. Bartholomew and Mr. Stephen Edwards the day after Frank Edwards' death I don't remember it, only as he talked about the death of Frank, and I think Stephen K. Edwards asked me to notify the company that I had obtained policies upon his life, and I told him I was going to Hartford and I would go into the Travelers' office that day and I would do as he requested me to. There is nothing more I promised to do. At Hartford I saw Mr. Dennis, the secretary, and told him of the death of Frank Edwards, and, so far as I knew at the time, I gave him the circumstances of his death. I think something was said in reference to the report on the policy at the time; don't remember all the conversation we had. When

I returned these blanks I don't remember any conversation, excepting that I said, "Here are the proofs," and gave them to him; don't remember anything further than that. I don't remember that I told them or either of them that these affidavits were to be returned to me.

117 Recross-examined by Mr. COGSWELL:

I presume I did say in that conversation with Bartholomew and S. K. Edwards that I promised to get the blanks for the proofs. I don't think in the conversation I had with Mr. Dennis that I told him I wanted the blanks to make up the proof of death. I don't think I ever asked him for them. Some one gave them to me; I don't know who; don't know but Mr. Dennis —. I don't recollect the conversation which Mr. Bartholomew has testified to, directing him to bring back the proofs to me. I don't state that no such conversation took place.

Counsel for defendant here offers in evidence letters as —, and being received in evidence are as follows:

"SOUTHBRIDGE, MASS., *Jan'y* 29, 1883.

Mr. E. M. Phillips, Southbridge, Mass.

DEAR SIR: I return to you the proofs of loss in the matter of the Travelers' Insurance Co. regarding the death of my brother Frank. They should have been returned before, but I had forgotten all about them until I came across them to-day. Please excuse neglect. Presume they will pay the loss when they get ready. Near as I can learn, the company is all sound. That is all, I believe, it [is] necessary to know at present. It might be well enough if Mr. Batterson or the proper officers will drop my sister a line when these proofs were received, so she can keep some memorandum of it.

Yours respectfully, S. K. EDWARDS."

118 "Office of E. N. Phillips, general insurance agency.

SOUTHBRIDGE, MASS., *Feb'y* 7, 1883.

Travelers' Ins. Co.:

I found the enclosed upon my table upon my return home. I forward the same. This is one of the unpleasant things happening when I was sick. Any information I can give you will do so with pleasure. I shall be in Hartford soon and will call in. I enclose just as I received.

Truly yours, E. D. PHILLIPS."

In answer to the counsel for defendant witness said the words in the letter "this is one of the unpleasant things happening when I was sick" *testified that* referred to the premium for the policy.

Recross-examination by Mr. COGSWELL:

We had no other correspondence, to my remembrance; don't think my memory is defective.

JOHN B. LEWIS, a witness for defendant, being affirmed, did testify as follows:

Reside in Hartford, Conn.; am a physician, and was educated as such in the city of New York; practiced my profession from 1853 until I entered into the service of the Travelers' Ins. Co.
119 This is my 15th year with the company. My duties with the company are of a twofold nature: First, as the chief medical officer of the company it becomes my duty to select examining surgeons for the various agencies throughout the country, and to see that they are properly commissioned for that purpose, and also to instruct them in their duties; secondly, that portion of my duty, and which occupies the greater portion of my time, is in charge of the claim department, so called, before whom pass all papers relating to claims against the defendant—all papers relating to claims arising under policies and death losses especially. All such papers come under my observation and are acted upon by me. All papers, all correspondence, papers of all kinds and of every nature that relate to death losses are in my immediate care. I dictate all replies to letters through my clerks. In common with others I had charge of the claim under this Frank Edwards' policy, and the rest was done under my direction. The first written communication which the company received after the death of Frank Edwards, as to the policy on his life, was early in February, 1883. It was a letter from Agent Phillips enclosing certain papers from the Edwards family—S. K. Edwards.

Mr. Phillips had authority, as local agent of Southbridge, to receive life applications, forward them to the company for their action, and, in case the policy was written, to deliver it, collect the premium, and report the premium to the company. He had no other authority in the life department.

There are two departments in the company. The company
120 made a reply to the letter received from Mr. Phillips. It was dated at Hartford, and is as follows:

"FEB'Y 9TH, 1883.

E. N. Phillips, Esq., ag't, Southbridge, Mass.

DEAR SIR: Your letter of the 7th inst., with papers in the case of Frank Edwards, at hand. We understand a chemical analysis of his stomach was made. We should like a full report of the analysis certified to by the chemist who made it.

Yours truly, RODNEY DENNIS, *Sec'y.*"

After that letter we received a letter in regard to the Edwards' policy, and [it] is as follows:

"SOUTHBRIDGE, MASS, *M'ch* 10, 1883.

Sec'y Travelers Ins. Co., Hartford, Conn.

DEAR SIR: We wrote your agent here some time ago asking to give me the date of proof of death of Mr. Frank Edwards when it was received at your office. If not incompatible with your interests should like to have you give it to me, as I want to forward it to my

sister, Katy L. Edwards. We mentioned the matter to Mr. Phillips last week, and he requested us to write [to] the home office.

Please give me as early an answer to this as you can conveniently, and oblige

S. K. EDWARDS
For KATY L. EDWARDS."

121 The company sent a reply to that letter of S. K. Edwards, and [it] is as follows:

"THE TRAVELERS' INSURANCE CO., CLAIM DEPARTMENT,
HARTFORD, CT., *March* 13, 1883.

S. K. Edwards, Southbridge, Mass.

DEAR SIR: In reply to yours [of] 10th inst., would say that we received a letter from Agent Phillips, dated Feb'y 7, 1883, wherein he writes: 'I found the inclosed upon my table on my return home, and forward the same.' The enclosed were incomplete proof papers relating to the death of Mr. Frank Edwards, and we acknowledged the receipt of same Feb'y 9th, asking for a full report of the analysis made of Edwards' stomach, the report to be certified by the chemist who made the analysis. We have no further intelligence respecting the matter.

Yours truly,

RODNEY DENNIS, *Sec'y.*"

Afterwards received another communication as to this policy:

"EDWARDS GRAIN COMPANY,
SOUTHBRIDGE, MASS., *M'ch* 20, 1883.

Mr. Rodney Dennis, sec'y Travelers' Ins. Co.

DEAR SIR: Yours of the 13th at hand. Please let me know if Feb'y 9th was the first time you had the proofs of death of
122 Frank Edwards; I supposed they had been at your office in July. Please let me know, if agreeable, by return mail, and oblige

S. K. EDWARDS,
For my sister, K. L. E."

The company sent a letter in reply thereto, and it is as follows:

"MARCH 21ST, 1883.

S. K. Edwards, Esq., Southbridge, Mass.

DEAR SIR: Your letter of the 20th inst. is at hand. We received the incomplete proofs of death, to which we alluded in our letter of 13th inst., on the 10th of February for the first and only time. We have only received them once.

Yours truly,

RODNEY DENNIS, *Sec'y.*"

After the writing of that letter the next we heard from the plaintiff or any one, in reference to this policy of insurance, was another letter which I have, and [it] is as follows:

"EDWARDS GRAIN COMPANY,
SOUTHBRIDGE, MASS., *May* 14, 1883.

DEAR SIR: If not asking too much, I wish you would forward the copy of the original application of Mr. Frank Edwards for the policy of $5,000, which you hold on his life, and oblige

S. K. EDWARDS,
For K. L. EDWARDS."

123 The company replied to that and complied with the request by forwarding a copy of the application as requested. Nothing more was received by the company from the plaintiff until a summons was served upon an agent of the company at Syracuse, N. Y., and the summons as served was produced and read in evidence. Neither the plaintiff nor any one in her behalf ever made any demand upon the company for the payment of this policy.

Q. Has the plaintiff, or any one in her behalf, furnished the copy of the post-mortem examination referred to in Dr. Curtis's affidavit?

Objected to by counsel for the plaintiff. Sustained, and counsel for the defendant duly excepts to the ruling.

No copy of any analysis of the stomach as made by Dr. Wood has ever been furnished to the company by the plaintiff or any one as her attorney.

The company, prior to the commencement of this action, had no knowledge or written information as to the post-mortem examination, except as stated in Dr. Curtis' affidavit. The company first learned of Dr. Harris' certificate long after the summons was served.

Q. State whether you ascertained that Dr. Harris had made a post-mortem examination.

This being objected to, counsel for the defendant offered to show by this witness that he went to see Dr. Harris and asked for the report or certificate of the post-mortem examination, and Dr. Harris refused, saying in substance that it was at the request of the family that he refused.

124 Court refused to allow the evidence to be given, and counsel for defendant duly excepted to the ruling.

Counsel for the defendant then offers to prove that the witness called on Dr. Wood with a like request and Dr. Wood refused to furnish any information in regard to the chemical examination of the stomach of Frank Edwards, and for the same reason as given by Dr. Harris.

Counsel for plaintiff objected to the evidence being given.

Court sustained the objection, and counsel for the defendant duly excepted.

No notice, proof, or written communication as to the death of Frank Edwards was ever received by the company prior to the receipt of Mr. Phillips' letter enclosing the papers which have been introduced here.

The amount of the value of this policy under the 6th exception, as computed by the actuary, is $169.33, net value June 19th, 1882.

It was here admitted by the counsel for the plaintiff that Frank Edwards had his life insured and the policies were in full force at the time of his death in 19 different insurance companies, of which six are what are called stock companies in the amount of $47,500, and in other companies, whatever they may be called—the Royal Arcanum, Mass. Mutual Aid, Salem Mutual Benefit, Knights of Honor, &c.—amounting in all to $37,181, and being a total insurance of $84,651. These mutual benefit companies are limitations on the amount—that is, not to pay so much money absolutely, but to pay the results of an assessment not to exceed so much, and these facts were read in evidence the same as if the policies were produced here.

125 The counsel for defendant then read in evidence the following certificate, which was to be treated as evidence of the facts therein stated:

["Seal of the State.]

Probate and Insolvency.

COMMONWEALTH OF MASSACHUSETTS, *County of Worcester:*

WORCESTER, *Dec.* 21, 1883.

William S. Hall, Esq.

DEAR SIR: Yours of yesterday, calling for mems. of estate of William Edwards' sons, is at hand. Petition in insolvency was filed Sept. 24, 1880; first publication was Sept. 27, 1880. The amount of claims proved, both partnership and private, was $48,042.45, of which only $1.95 was private. The debtor was discharged from his private debts, but not from his partnership. For assets the inventory of the estate of Frank Edwards, one of the partners, shows $4,962, which being reduced by mortgage, dower, homestead, &c., shows a bal. in 2d acc't of $75. The inventory of Stephen K.'s and Frank's estate shows $16,961, and the bal. acc. of his estate $3,944.67, and of 2d acc. (partnership) $4,352.65, and we shall be prepared to appear before the U. S. com'r at the time you mention, with papers, records, &c.

Very truly yours, CHARLES E. STEPHENS.

My charge for this is 50 cts."

126 Counsel for the defendant here read the deposition of Dr. John A. Follett, which was duly taken before the U. S. commissioner in Boston, in manner as required by law, counsel for the plaintiff being present:

My name is John A. Follett; age, 49; residence, 219 Shawmut avenue, Boston; am a physician. I am a medical director of the

N. E. Mutual Aid Society. In the summer of 1882 I went to Southbridge and to the house that I understood was that of the father-in-law of Frank Edwards. I went at the request of the secretary of our company and also of the secretary of the Home Mutual Aid. The purpose of my visit there was to discover anything I could in regard to the death of Edwards. The funeral had not taken place when I reached Southbridge. It was between 12 and 1 o'clock, and I think the funeral was at about 1. The first person at Southbridge I asked to direct me was Dr. Bullfinch, who is a physician at Southbridge. I then saw the mother-in-law, I think, and then the father-in-law and Mr. Bartholomew, who is present here, and Dr. Lamb. (It is admitted the father-in-law's name is Mr. Barnes.) I saw Mr. Barnes, Mr. Bartholomew, and Dr. Lamb altogether and at one time. The mother-in-law was in the room. I saw the lady first, and she sent for Mr. Barnes, who was said to be at the church, and he came in. I stated that I had come on an unpleasant duty. I stated that I represented two Mutual Ins. Co's; that I had come to learn what I could, and that my desire was that there should be a post-mortem examination. I think I stated it to Mr. Barnes, and he then requested a delay of a few moments and went out. He brought
127 back Mr. Bartholomew, and then Dr. Lamb, and to them I stated that it being a peculiar death, and peculiar circumstances connected with it, I thought it would be for their interest that a post-mortem examination should be made. The reply of Mr. Bartholomew was in substance that there was no need, and that he for one should object to it. Dr. Lamb also said that there was no need of it, and there was the medical examiner's certificate that he died of congestion of the brain and that that ought to be sufficient, and that he would not advise any post mortem.

This conversation covered several minutes, and most of it was with Mr. Barnes, Mr. Bartholomew, Dr. Lamb, and myself. Mr. Bartholomew, who was present, is the same person now present, as I believe. I did not make any autopsy on that day, and I did not see the body that day, nor the coffin, except at a distance. We passed up by the cemetery as they were removing the body from the hearse. I was so far off I could not distinguish individuals at the cemetery.

Cross-ex'd by pl'ff's counsel:

Previous to going to Southbridge I had not received official notice of the death of Frank Edwards. I understood he was dead; had not made any examination as to the circumstances attending his death; had not seen the medical examiner. I knew Dr. Harris, the medical examiner; had not seen him on the subject. I was not called upon to make any investigation in regard to the circumstances of the death of Frank Edwards before I went to South-
128 bridge; am connected with the dental college, but not with any medical school. Dr. Harris is a professor in the college, and I am personally acquainted with him, and was in 1881; had not conversed at that time with Dr. Harris in regard to Edwards' death. When I came to Southbridge I had no personal knowledge

of the circumstances of Mr. Edwards' death. I say I went to Mr. Barnes' house first, and met Dr. Lamb there, and had a conversation with him there. I had a conversation with Dr. Lamb and Mr. Bartholomew. Whether Mr. Barnes spoke to me during that conversation I do not recollect. I know that Mr. Bartholomew and Dr. Lamb did most of the talking. I swear that Mr. Barnes was present. I was in Southbridge 3 hours. The company I represented had a policy of insurance on the life of Edwards.

Redirect:

My company had two different policies, each for $5,000, and I think some small ones; 2 of $500 each, I believe; do not know to whom they were payable. It was the New England Mutual Aid.

Recross-ex.:

The company is a company which insures upon the assessment plan on the death of each member. We make an assessment to secure funds to pay losses, but not necessarily on the death of each member. Our assessments are sufficient to pay ordinarily the loss on a single death, or more in a particular class, and persons taking policies are only members as long as they pay their assessments.

The deposition was duly signed by Dr. Follett and certified
129 to by the commissioner, and sent to and filed with the clerk of this court.

Defendant here rests.

A. J. BARTHOLOMEW was here recalled as a witness for the plaintiff, and being examined by plaintiff's counsel did say:

I had known Frank Edwards since 1860. My wife was a cousin of the family; had been his professional adviser; knew him in business and social life.

Q. What were his social characteristics?

Counsel for defendant objected as immaterial. Overruled, and def't's counsel duly excepts.

A. Mr. Edwards was a remarkably social, jovial, good fellow. He was fond of society, and in society a good deal. He was cheerful, of even temperament, and a good neighbor. So far as I am aware, there was no trouble in relation to his pecuniary affairs in June, 1882, except that company debts were undischarged against him. To my knowledge they were not. There was no suits or pressing creditors to my knowledge. His domestic relations were pleasant, and were always pleasant.

All this evidence was taken subject to the objection of defendant as being immaterial, but the court overruled the objection, and counsel for def't duly excepted.

Witness continues: He often spoke of his older boy with a great deal of kindness. He had two children; had been married about five years, I think. I never heard that there was a report of a chemical analysis as made by Prof. Wood.

Cr.-ex'd by counsel for defendant:

I nor the family never asked Dr. Wood for a written re-
130 port. All I will say is I never knew of any written report of Dr. Wood's chemical analysis.

Frank Edwards' actual business the year prior to his death was with his brother, Stephen K. Edwards, managing the affairs of the Edwards Grain Co. It was a corporation. The capital was furnished by his father and his wife's father, William C. Barnes. He had a salary, I think, of $1,200 or $1,500. His father had a very large real estate. He managed his father's business and collected his rents, and he and his brother-in-law attended to the repairs of the houses and matters of that kind. His father paid him for his services; don't know how much. The business ought to have paid two men for doing — at least $1,000. I don't know that he had any other means of support except what I have stated. There were debts against him unpaid, I think; no judgments. His wife's father owned the house he lived in.

Mr. Cogswell, Jr., read from the direct examination of Manning Davey, a witness whose testimony was taken on behalf of the defendant before a U. S. commissioner; counsel for defendant objecting thereto; overruled and an exception. The portion read is as follows:

The witness was the secretary of the Eastern Mass. Masonic Mutual Relief Association. He said he saw Frank Edwards on the day of his death. He called at my office in the morning, and I had quite a long conversation with him. He stated, if I recollect right,
by way of explaining his being there so early in the morn-
131 ing, that he had come from Southbridge or some other point, and was completely tired out, and thought he would stop there and perhaps see me and gain a little rest, and then he intended to go down to the Parker House and get some rest. I think he said he had been riding in the cars all the night before and got no rest. He did not express any anxiety as to the delay in the certificate being forwarded to him.

Counsel for pl'ff also read from the cross-examination as follows:

I should say I saw Frank Edwards about 9 o'clock in the morning; could not say how long he was there.

THOMAS SANDERS, a witness for the plaintiff, testified as follows:

I live in Southbridge, Mass., and have since the fall of 1870; was acquainted with Mr. Frank Edwards from that time to the time of his death; particular friend of mine socially and in business transactions. We lived within 70 feet of one another. He was [of] a very genial, social temperament; generally found Mr. Edwards at places of amusement or entertainment where I attended; saw him the day before his death; it was on Sunday. He was passing my house about 4 o'clock in the afternoon; no conversation with him; just spoke as he went by. He appeared on that day as usual; never heard him complain about his business relations subsequent to the

time of his failure. He failed in Sept., 1880, and should judge he was out of business about 5 months. After that he was in the employ of [the] Edwards Grain Company; never heard him complain about his business. In the years 1881 and '82 and down to
132 the time of his death I sustained intimate relations with Mr. Edwards. During that time I never heard him complain or appear depressed about his business; was a member of the same club; met him in the evening there; member of the same Masonic lodge. His domestic relations were pleasant, so far as I know.

Cr.-ex'd by defendant's counsel:

I came to the trial at the personal request of the plaintiff and without a subpœna, and so far I have paid my own expenses; don't know that I expect to be reimbursed; haven't made any contract; have stayed here all the week for the interest I take in this suit. I am in the bleaching and calico printing business; am a manufacturer, and we dealt with Frank Edwards in buying grain for our horses, and also some in lime, cement, &c. So far as I have heard I can also say his domestic relations were pleasant; have not heard any story or slander as to his domestic relations for the past two years.

Re-ex.:

Southbridge is over 200 miles from here, I should say.

SAMUEL S. PERRY, a witness for plaintiff, testified as follows:

I live in Southbridge, and have for 20 years; was well acquainted with Mr. Edwards; have known him at least 15 years; members of the same club; lived near one another. In the years of 1881 and
1882 he was a genial, social, pleasant gentleman; don't think I noticed him disheartened or downcast during the time I knew
133 him; very little business relations with him; bought coal there occasionally. His domestic relations were very pleasant, so far as I ever saw; generally left the club about 10 o'clock; hardly ever knew him to stay later than that hour. He used to go to entertainments and parties very generally; saw him the Sunday night previous to his death and also about six o'clock on Saturday; had a little talk with him then; met him on the street in front of my house. He appeared all right as usual; saw him Sunday evening between seven and eight o'clock, and had a conversation with him in front of my house; it was about books, &c.. He appeared as usual; I noticed nothing; did not appear downcast or depressed in spirits.

Cr.-ex by defendant's counsel:

I came down here at the request of plaintiff. I propose to pay my own bills; don't know that I expect to be refunded; had no subpœna; been here all the week; have visited at Frank Edwards' house through his married life occasionally; don't know that I ever

heard anything in Southbridge that was not so pleasant about his social relations. I don't think I ever heard the subject mentioned. I think I am positive as to that.

Mrs. FRANK EDWARDS, a witness for the plaintiff, testified:

I am the widow of Frank Edwards. I married him five years ago the 13th of last December; have two children and had at the time of his death. From the time of our marriage down to the time of his death the relations existing between us were always
134 pleasant; no interruption in that respect. I remember when he left me to go to Boston the morning of his death. He ate his breakfast and bid me good-bye as usual, and left the house I supposed in excellent spirits; he did not complain of anything to me.

To the court she said: He left home on Monday, the morning of his death, at 7 o'clock in the morning.

Cross-ex'd by defendant's counsel:

He frequently went to Boston. My home is Southbridge; have always lived in Southbridge. Since my husband's death I have kept house by myself.

The counsel for plaintiff here conceded that the witness had two policies on her husband's life that she is seeking to collect, and the defense of suicide is interposed as a defense.

I don't know anything at all as to whether there was a large amount of insurance on my husband's life.

JOHN SANDERSON, a witness for plaintiff, testified as follows:

I reside at East Summer, Mass. I am bell-boy at the Parker House, and was in 1882. I remember the death of a person at the Parker House on the 19th of June, whom I afterwards learned was Frank Edwards; never met him before that day, to my knowledge. The first time I met him I answered his call to his room, which was number 52, 2nd west. I was called to his room about three o'clock in the afternoon, or a little before. I answered his call and
135 knocked at the door, and he said, Come in. He got up from his bed; he apparently had been resting upon the bed. He got up from his bed, and he had neither coat, hat, nor shoes on. Then he got up and addressed me either as "waiter" or "John," and he says, "I have got a bad pain in my head; I have a bad head. I should like you to get me some spirits of camphor." He also expressed himself several times while I was in the room about the pain in his head. He said he had a terrible pain in the head, a terrible pain. I said, "Well, sir, it appears to me you have overdone yourself. It is a very hot day." He replied in a kind of regretful voice, "Yes, I have done too much;" and then requested me to get the camphor. There was another message I did for him; can't say whether I did two at the same time or separately, and [he] said to me, "I will get you to send a telegram for me; will you do it?" I said, "Yes, sir." He then got up and went directly to the bureau and

took a paper out of his pocket-book and wrote a telegram for me to send for him, and he requested me to send it for him. I then went and attended to the telegram first, as near as I can remember. I sent the telegram anyway; went and got the spirits of camphor and brought it to his room; was not gone over 20 minutes.

A paper was here presented to the witness, and he said he recognized it as the paper he told him to send, and that was the telegram he did send.

He gave me some money, and it was to pay for the telegram and camphor. I came back with some camphor to the room. When I came back he again complained while I was in the room about his head. He made a remark during the time he was writing
136 the telegram, which was not addressed to me; was in respect to his head. I can remember very well that he said that or some such word: "Strange, so strange; I never felt so before," or words to that effect. That was not addressed to me. That was outside of our conversation. The next thing he said to me was, "Now I will lay down and take a little rest, but," he says again, "I depend upon you to call me at 5 o'clock, because I must get that 6 o'clock train. Can I depend upon you?" Says I, "You can." He says, "You are sure of that?" I said, "Yes, sir." I says, "I think you had better lie down and take a little rest; you may be sure I shall call you." That was about the last I can remember. The telegram was then read, and is as follows:

"BOSTON, MASS., *June 19th.*

S. K. Edwards, Southbridge, Mass.:

Will be home by way of East Brookfield.

FRANK."

I did go to call him about five o'clock. I knocked at his door several times and got no answer. I went down-stairs, and when I had got down there I looked around the office to see if I saw him around there, and I didn't see him. The idea struck me that I would take the pass-key and be sure he was out, because he seemed so particular about his call. I then got the pass-key from the office and went to his room and endeavored to open the door. I couldn't open it, which was proof that somebody was inside. They
137 are double locks—one inside and one out. If you lock on one side you can't open them on the other. I couldn't open the door. Then I got a little startled. I went right down to the office and reported there that I could not get in such a room; that I had this call at such a time, and asked that they would send up a porter or some one to look over the ventilator into the room. They went right up. A step-ladder was procured, and we looked over the top of it and there was somebody lying on the bed. Then some of us went and got the carpenter, and he came up with his tools to take off the top light, which is a heavy wire frame to protect entrance. He took that off. When that was taken off one of us dropped inside and opened the door, and when we went in the man laid there dead on the bed. He was lying, I should say, in a reclin-

ing position, as natural as any man would lie if he was merely resting himself. I went not altogether close to him. I went within a foot of the bed. I was so struck with the circumstance that I couldn't really say how I felt. I felt so shocked at the idea. There was a handkerchief bound around his head. I noticed the odor of camphor in the room. The phial was on the bureau or washstand. I should judge part of the camphor was in it still; don't know whether the window was open or not. It opened into an area or space between our building and the next, 20 feet or so. It was an enclosed space. It was not a street; it was entirely closed to all communication. I didn't personally look about the room to see if I could find empty bottles or anything of that sort; went there subsequently with Dr. Harris as soon as he came; don't exactly
138 know how long subsequently. So far as I am aware, Dr. Harris did not look about the room to find any causes of death. The doctor remained in the room some little time. He took the bottle of camphor. Mr. Parker was with him.

Cr.-ex'd by counsel for def't:

Am still employed at the Parker House; was gone from the room 15 or 20 minutes in going for the camphor; positively do not remember where I got that camphor, because there are so many drug stores in that neighborhood. I am in the habit of going to the nearest; the nearest is on the corner of Clermont and School. When I first answered the call the room was not locked. I knocked, he answered, and I went in. He was then lying on the bed. When I went to call him at five o'clock, the door was then locked on the inside by the key which was then in the key-hole. When I left him after I had taken the camphor, I did not hear him get up and lock the door. I put the camphor on the bureau or washstand. Mr. Edwards was not then on the bed; and all the time of our conversation he was on his feet and around the room—walking around. I did not hear him lock the door when I left him. The room was in a quiet part of the Parker House. No one would ordinarily go in the room when he was there. When I saw him lying on the bed dead he was quite composed. There was no apparent distress upon his face. The bed was not wrinkled nor the clothes upon his person. When I first saw him he was lying on the bed, and as I opened the door he got off the bed. His personal appearance was
139 like a person who was overheated and overdone. At the time he asked me for the camphor he did not have the appearance of anything more than a man with a bad headache. It was not an uncommon thing for gentlemen around the Parker House to have headaches. It is not an uncommon thing for me to wait on gentlemen who have headaches; have been there something like 15 years. Since the 19th of June Mr. Bartholomew has been there, and asked me what I remembered about the matter. He came some months ago; did not tell him then all I have told now.

Redirect examination:

It is not an unusual thing for gentlemen in the Parker House when they go to take a nap in their rooms to lock their doors.

L. W. CURTIS, M. D., a witness for plaintiff, testified as follows:

I live in Southbridge; am a physician at that place and have been for some time; was acquainted with Frank Edwards during his life. I remember making a post-mortem examination upon the body of Frank Edwards in connection with Dr. Harris and Dr. Lamb. It was the 23d of June. I was given some sheets of paper and asked to take the minutes, and acted as scribe. I have not the original minutes. I have a copy here. I can repeat the minutes, I presume.

The body was uncovered and placed on two barrels, the head of the body lying towards the west; the body lying on the back,
140 and when uncovered looked natural, excepting there were a few pinkish spots along on the chest on each side and upon the side, and, I think, some on the groin; otherwise the body seemed perfectly natural. These spots were supposed to be from the ice in freezing. The elbow of the right arm had a little rigor mortis, and also the right knee slightly; otherwise there was no contraction of the muscles; everything seemed natural, as we see a corpse on the fourth day. Dr. Harris made an incision into the scalp and dissected down. It showed very great congestion, blood running quite freely, and even ran out of one of the large canals of the skull. The skull was then cut open, exposing the dura mater, which was highly congested; the veins were even corrugated; the dura mater being moved, the inner coating showed a glistening appearance. I omitted one thing as to the external appearance; the eyes were sunken, opaque, showing that decomposition had taken place. The inner coating of the brain showed that same highly-congested condition, and lying on the left side over the posterior portion for the space of about three inches square was a clot of blood to the amount of two teaspoonfuls or more; estimated at that amount certain. This was scraped off; that was coagulated blood. There was effusion; some serum effusion under the arachnoid coat; some blood between the hemisphere. The brain was taken out and cut into pieces, and found to be highly congested. We then proceeded to open the chest. The right lung was partially congested; the lower portion entirely; the upper portion was quite healthy or quite natural. The left lung was entirely congested. The heart, to use Dr. Harris' expression, was very large and muscu-
141 lar, containing no blood. We then opened the abdominal cavity, taking out the liver first. It was getting a little dark in there, and we took it to the door and took his knife and cut it in slices, poking it open, saying, "How healthy this looks." He also took the kidneys in the same way and made the same remark. Once or twice during the autopsy I think he said he never saw so healthy a subject as this was, or a more healthy subject than this was. The stomach appeared natural on the outside; we saw nothing

about the stomach that was not natural; it was ligated and put into a glass jar with a glass stopper—I am not so sure about the stopper—and I saw it put into the jar and the stopper put in at the autopsy before they left. Then Dr. Harris turned to me and said, "It is getting late; and I have but little time to reach Boston. Will you sew up this body?" I told him I would, and I did so. As the result from that autopsy our united opinion at that time was over-exertion and heat, producing congestion and effusion of the brain, which Dr. Harris remarked was enough to kill several; did not notice any odor of hydrocyanic acid while we were dissecting that body. This clot of blood is what is known as apoplexy, or the result of apoplexy.

Cross-ex'd by defendant's counsel:

The autopsy was in the charge of Dr. Harris and Dr. Lamb both. I did not use the knife; I felt of the lung and put my finger on the brain, I think. I was there to assist in the examination; I
142 think I was there at the request of Mr. Barnes. I was not notified to go to Dr. Wood's laboratory; there was no examination of the contents of the stomach there; the stomach was not opened at all; it was bound at the ends before it was removed from the body; it was tied at each orifice; there was nothing put into it there. I examined the brain particularly, and it was congested. The vessels in the brain were more particularly congested and full of blood than the brain itself. As we cut into the brain particles of blood would ooze out, more or less; couldn't tell how much; the blood oozed out of the brain in drops; some drops not clots; have made several affidavits in this case to be sent to insurance companies; can't tell how many; more than five. I stated the cause of death each time the same; couldn't tell you when I first learned there was a chemical analysis taken of that stomach by a professor of Harvard; it was quite a long time afterwards; didn't see Dr. Harris or Dr. Lamb to make enquiries as to the result of that examination. I knew the stomach was taken for the purpose of completing that post-mortem examination. Without that examination of the stomach the post-mortem examination would not be practically completed.

There might be a doubt as to the cause of that man's death until the stomach was opened and the contents examined; am familiar with the smell of bitter almonds. If there had been sufficient smell of bitter almonds to make me dizzy with one smell, and if it came from the stomach, I should think there was enough to kill a
143 person. If I had been present at that analysis made by Prof. Wood, and known of it, I should have had to have stated something more to the affidavit that I made in the Travelers' Company case, and which was attached to the proofs of death. What more that would have been I could tell better if I could have seen the analysis; didn't take any interest to enquire about the result of that analysis; didn't enquire of Mr. Barnes nor of any person in regard to it. Most all of the affidavits I made were drawn by me and sworn to before Mr. Bartholomew.

Q. Assuming that Mr. Edwards died from the effects of prussic acid found in his stomach, was there anything in the appearance of the brain or of the lungs or heart inconsistent with that idea?

A. Do not think there is or was, except the clot of blood. I think in a poisoning by prussic acid we never get the clot; never before saw a subject who died of prussic acid; had no personal experience upon that subject; have been family physician of the Edwards family for over 33 years.

Redirect examination by Mr. COGSWELL:

There was no congestion of the liver, kidneys, or spleen. My opinion now is that heat was the primary cause of Mr. Edwards' death. Over-exertion producing congestion and effusion of the brain was the second cause. In common parlance, I should say the cause of death was apoplexy.

Recross-ex. by counsel for defendant:

[Q.] Do you want the jury to understand that the quantity of hydrocyanic acid or cyanide of potassium found in his stomach had no effect upon his constitution or hastened his end?

144 A. I don't know anything about it, because I don't know how much was in the stomach; have heard Prof. Wood's deposition read. I presume he is a gentleman of experience. The effect of a large quantity of that acid introduced into a man's stomach would be to render him insensible and motionless in the space of ten seconds. His heart would be paralyzed within 8 or 10 seconds. That would stop the circulation of blood just as it was. The blood would coagulate in the vessels of the veins of the body; don't know about the effect of prussic acid on the vessels of the brain and head.

Redirect by Mr. COGSWELL:

I think if a large quantity of this acid was taken into a man's stomach that man would be apt to fall dead as though he were shot through the heart by a rifle ball. I think that is so stated by the authorities.

GEORGE M. GARLAND, a witness for plaintiff, testified as follows:

I reside in Boston; am a physician by profession and graduated at the Havard medical school. I pursued my studies for two years abroad *in study*. Have been professor of thoracic diseases in the University of Vermont, and held also two positions in the Harvard Medical School; have heard the autopsy as narrated by Dr. Curtis. In my opinion, the cause of Mr. Edwards' death was apoplexy—effusion of blood in the brain. From study I know the effects

145 of hydrocyanic acid. After taking that acid the person rapidly becomes unconscious; the unconsciousness is associated with difficult breathing, prominence of the eyes, foaming at the mouth, prolonged expiration and spasmodic inspiration and finally death; have heard in what position the body of Edwards was found on the

19th of June. There were no symptoms described, associated with the condition in which he was found, that pointed to that poisoning. The conditions were absent—that is, the prominent symptoms mentioned were not there. I could not say it would exclude hydrocyanic acid. Supposing some of these symptoms were absent, or even if all were absent, the absence of all the symptoms would diminish the supposition — the odor of bitter almonds was produced by hydrocyanic acid. I could not say from personal experience whether a man could detect the odor of hydrocyanic acid when two hours after death he came near enough to detect the odor of camphor. The authorities say there is an odor of the acid remaining after death. I infer from what I have studied that if a man died of hydrocyanic acid the odor in the body would be present 96 hours after death. It would depend upon the amount taken. Bromide of potassium is an ordinary remedy for headache; am familiar with the appearance of cyanide of potassium and bromide of potassium; can't tell from observations of two vials which contain one from the other.

Q. Assuming that a man had taken five grains of cyanide of potassium two or three hours before death, would it have been consistent with the death of Frank Edwards as narrated to you?

146 A. I can't answer. The clot of blood would not naturally be the result of injection of hydrocyanic acid; not as I understand it.

Cross-examined by counsel for defendant:

Have practiced medicine in families; have made post-mortem examinations and have assisted in a great many; have seen a person who died from prussic acid, but — never seen a subject examined who died from prussic acid. All that I know pathologically of the effects of hydrocyanic acid upon the system is from reading. The changes it produces in the tissues as shown at autopsies I know nothing about except from reading. A post-mortem examination is certainly of great use in detecting the cause of a man's death. It is not, in my opinion, the best test or way of determining what a man died of, not from post-mortem examinations alone. My reading teaches me that in those cases of a large quantity of poisonous acid, it produces a condition of asphyxia and the patient dies of suffocation, and the brain is congested and in the condition in which it is ordinarily found in people dying of suffocation; that there are no symptoms in the body, aside from the acid itself, which are characteristic and exclusively points to death from the acid. The congestion of the spleen, liver, and lungs would only point to the intensity of the suffocation. The acid does not first act upon the heart in paralyzing its action. It does not follow that a man died of prussic acid who takes it medicinally. It is taken diluted. It is an extremely dangerous

147 poison and in a pure state will almost instantly kill a man; have never tried to purchase cyanide of potassium at the stores; have never used the drug in my practice. My principal occupation is a physician. I assist at Harvard College in chemical medicine, and have my hospital practice in addition.

Redirect by Mr. COGSWELL:

I saw a case where the subject was supposed to have died from prussic acid; there was no autopsy made. A bottle labeled "prussic acid" was lying by his side in a chair. There was a small table with a tumbler on it empty when I entered the room. Beside it was an easy chair with an empty bottle marked "prussic acid" upon it and uncorked. On the bed, with the feet towards the table, was the body of a man with his head pointing away from the bottle. He was lying on his back and one arm thrown on his body. I understood that the exact position of his body was different; that his arm had been moved.

Recross-examination:

We supposed that this man died of prussic acid. There was no autopsy. Prussic acid in large quantities takes effect almost instantly; I suppose from 8 to 10 seconds. The number of seconds has never been defined. It would depend upon the condition of the stomach and contents at the time the poison was swallowed. Overexertion must not be combined with great heat to make apoplexy, unless the patient gave away from the force of the congestion of the brain. I never made an autopsy on a person dying of
148 sunstroke. I never knew of a young man who had never been ill in his life, 30 years of age, to die from apoplexy, being well, bright, and cheerful in the morning and dying from apoplexy in the afternoon.

Redirect:

It would not be impossible. I should suppose, on general principles, a smaller quantity of hydrocyanic acid would produce the same result upon a person debilitated and have more effect than if he was strong and healthy and not run down.

JAMES F. BABCOCK, a witness for plaintiff, testified as follows:

I am 40 years old. I live in Boston; am a chemist by profession. I studied my profession at Cambridge 22 years ago; have practiced chemistry ever since; was professor of chemistry for five years in Boston University; five years previous to that in the Mass. College of Pharmacy; have held for 10 years the appointment of State assayer—that is, State chemist. Hydrocyanic acid is an extremely rapid poison. Granular cyanide can be procured at drug stores; have frequently seen it in Boston.

Counsel presenting to the jury two vials, witness says: I procured them to be filled and tested the contents of the bottle at the Albany Medical College. I know one contains bromide and the other cyanide of potassium; can't tell by the appearance which is which. There is a mark on both which enables me to know. Hydro-
149 cyanic acid has a very peculiar odor, and usually described as that of bitter almonds, but it is somewhat different from that. It is extremely penetrating in that respect; not unlike ammonia. If a person died of hydrocyanic acid the odor would

usually be imperceptible an hour or two after death, but not necessarily. In a post-mortem examination made 96 hours after death, and any quantity of hydrocyanic acid had been taken into the stomach, I should expect the odor would manifest itself in dissecting the body, and that there would be a strong smell in the blood. The material being so diffusive it would have diffused itself into the blood and abdominal cavity. A very small part of hydrocyanic acid would answer the test Dr. Wood described. One part in 20,000 or 30,000 of hydrocyanic acid may be detected. Those bodies which are volatile and produce a gas may be detected in minute quantities, and the actual quantity detected in this case, as shown by Prof. Wood's affidavit, was shown to be a small quantity. That quantity would have responded to the test that he made. I will say that two drops of ammonia smell as strong as a barrel, and no opinion can be based upon any quantity by estimation in that way; the odor itself is strong; it is the nature of the odor to be powerful.

To the court: There was nothing in Dr. Wood's test to indicate that there was sufficient quantity taken into the stomach to produce death.

In answer to plaintiff's counsel witness further said: Hydrocyanic acid is present in a great number of substances. It is the result of reaction which takes place between certain constitutents in
150 many plants, so that popularly it is said to be present in cherry-stone meats and peach leaves and a variety of fruits, not, however, in large quantity, but yet in sufficient quantity to develop a perceptible odor. It occurs in maraschino, kirschwasser, and the cordials. I should not expect that five grains of cyanide of potassium taken two or three hours before death would produce the results that have been apparent in Mr. Edwards' case. Death would be more immediate unless cyanide were contained in some covering or vessels, or what the pharmacists call cache or capsule. In that case the action would be delayed. Ordinarily its action would be 15 or 20 minutes; not so rapid as hydrocyanic acid. Taken in a smaller quantity than 5 grains it would respond to all the tests of Dr. Wood's.

Cross-examined by defendant's counsel:

I prepared those two phials myself for this trial. I am employed in this case as an expert professionally; it is a part of my business. I go about the country, and go for the purpose of being examined and giving my evidence as an expert witness; have never taken a complete post-mortem examination of a man who died of prussic acid; not a complete autopsy. It was six or seven years ago of a woman who died in the Mass. hospital, when I made an examination of the stomach and contents. That was hydrocyanic poisoning. I think that is the only place where I have seen an autopsy in the matter of hydrocyanic poisoning; it is the only case I have seen of a person who died from prussic acid poisoning; have seen quite a number in case of animals.
151 The books say that the odor of the acid can be discovered sometimes five or six days after death. It is always true

as a general principle that the books also teach that their are other odors strong enough to blot out of existence the odor of bitter almonds.

One odor may be covered by another. As for camphor doing it I should consider as a general theoretical statement that any odor might be mastered by a sufficient quantity of something else. You can have a small quantity of any bad odor and you can mask it by a large quantity of cologne.

I think we can mask hydrocyanic acid by camphor. I think two drops of ammonia will smell as strong as a barrel full. I mean the odor is the same; the effect is the same; the sensation is the same.

Plaintiff here rests.

The court then stated that he would allow defendant's counsel to read certain evidence in Dr. Wood's deposition which had been before excluded, as Mr. Bartholomew was sufficiently connected with the case to make his statment admissible, and such evidence — as follows:

I certainly have in one sense had a communication from Dr. Lamb, or some one representing themselves to be connected with the deceased, asking that I should not disclose the result of the examination. I received instructions to the effect that my work had been done for the family and that my knowledge of it be-
152 longed to the family. I think I received that from Mr. Bartholomew. It was some months or weeks after the examination. It was a verbal communication.

It was conceded by counselfor def't that the endorsements on back of these proofs of loss were made at the office of the company, subject, however, that the fact is not material, and court gives an exception to the ruling.

Testimony was here closed.

Counsel for defendant now moved the court that the evidence given by Mr. Bartholomew as a witness for plaintiff as to the conversation had with D. H. Phillips be stricken out of the case, for the reasons it now appears that Mr. Phillips was only a local agent for defendant and that his authority ceased when the policy was delivered to the assured; that he had no authority to act for or represent the defendant; that Mr. Phillips never acted for the company, except to deliver this policy in this action.

The court denied the motion, and counsel for defendant duly excepted to the ruling.

Mr. Field, counsel for defendant, then moved that the court direct a verdict for defendant upon the following grounds:

First. That the plaintiff has not produced or proved the contract alleged in the complaint.

Second. That the plaintiff has failed to establish the allegations in her complaint, especially has failed to prove that any notice in writing was given to the company after the death of Frank Ed-

wards, as provided in the contract, and no proof of death
153 was furnished or served upon the company, as provided in the contract, nor even those alleged in plaintiff's complaint.

Third. That the plaintiff has not proved that she delivered to the defendant any proofs of the death of Frank Edwards within seven months after the death of Frank Edwards.

Fourth. That the plaintiff has failed to prove that Frank Edwards did not die of any of the causes stated in the 8th exception in this policy contained.

Fifth. That the contract made by the defendant is a conditional contract, and as the plaintiff claims a larger amount to be due to her she must establish that death did not arise from any of the exceptions of the contract of insurance.

Sixth. That no demand was ever made by the plaintiff upon the defendant before the commencement of this action.

Seventh. That at the time the action was brought no money was due upon the contract, because the plaintiff had not performed the conditions on her part to be performed, and the 90 days had not elapsed.

Eighth. That as no waiver of any of the conditions of the contract by the defendant was alleged in the complaint none can be proved.

Ninth. That under this contract the defendant had a right to demand of the plaintiff that she furnish — full particulars of the death of Frank Edwards, than were contained in the affidavits allowed by the court to be read herein, and such a demand
154 having been made and none furnished, the plaintiff has no cause of action against the defendant upon this contract.

Tenth. That the uncontradicted evidence herein establishes that the plaintiff did not furnish the defendant with full particulars of the facts found by the autopsy and the chemical analysis as made by Prof. Wood; then there was concealment on the part of the plaintiff sufficient to avoid the policy.

The court then and there denied the motion so made, and the counsel for the defendant duly excepted to the ruling so made.

The court then charged the jury as follows:

GENTLEMEN OF THE JURY: At this late hour, and after the able and exhaustive addresses to which you have listened by the counsel for the defendant and plaintiff, respectively, stating their theories of this case, I shall not detain you with any extended statement of the evidence, as I think your time can be better occupied by deliberating upon the case in your jury-room. I shall, however, as briefly as possible, state what I concede to be the questions to which you are called upon to answer. Those questions are to be answered without prejudice or passion, simply by applying to them the evidence that has been presented before you in this court-house. The fact that this plaintiff is a lady and the other fact that this defendant is a corporation will not, I feel confident, influence you
155 in arriving at a true determination. Calmly and dispassionately you should approach the consideration of the case, and

answer the questions which will be sent to you precisely as you would if this were an action pending between two individuals.

On the 24th of May, 1882, this defendant, acting through its agents, issued to Frank Edwards, the insured, a policy of insurance, dated the 20th or 24th day of February, 1882. By the terms of that policy, which was a contract and subject to all the rules of law applicable to contracts, this defendant agreed to insure the life of Frank Edwards, and upon his death to pay to this beneficiary, Catherine L. Edwards, the sum of $5,000, provided the assured and the beneficiary, or his personal representatives, duly and fully performed the contract on their part.

So that the burden is upon the plaintiff to establish the allegations of the complaint by a fair preponderance of evidence to satisfy you that she and those acting for her duly and properly performed all the conditions precedent, as stated in this contract. There are several of these conditions, but it is not necessary to refer to more than two of them. By one of the clauses of this contract it is provided that if the insured—that is, Frank Edwards—come to his death by suicide, voluntarily or involuntary, whether sane or insane, this policy shall be null, void, and of no effect. That, gentlemen, is a contract which he had a right to make. The other clause, to which reference has been made, provides that in case of death
156 it shall be the duty of the assured (that is, Catherine L. Edwards), or her or his representatives, immediately to give notice to the company of the death, at its office, in Hartford, Connecticut, and within seven months thereafter to furnish to the company written proofs of death, stating the time, cause, and place of death; and it further provided that this shall be done without concealment or fraud of any kind.

I have said in your presence, and in order that the counsel for the defendant may have the full benefit of it I again repeat, that if upon this evidence you find that upon the 3d of July or during the seven months limited by the contract the proofs of death, which have been referred to, were served upon Mr. Phillips, who was held out by this company to be its agent under the circumstances detailed in this case—that is, if you believe that he stated to the representative of this assured that the proofs were to be left with him and served upon him and not upon the company, then, I say, for the purposes of this case, that that was sufficient service upon the company within the provisions of the contract. But, it is said, that there was not a full statement made; that there was concealment and fraud or that there are facts of which concealment and fraud may be predicated, which the jury are at liberty to bring home to this plaintiff. There is no evidence that I recollect, gentlemen, that the plaintiff personally knew any thing in regard to the post-mortem examination or the subsequent analysis made in Boston. If there is such evidence, and you believe that there was concealment of any material fact on the part of this plaintiff, or upon the part of any one acting for
157 her, by her direction or with her knowledge, which it was her duty to disclose and bring to this company, then you are at liberty to say that that part of the contract, their condition pre-

cedent, was not fulfilled upon her part, and that she cannot recover. There is evidence that Mr. Bartholomew, who, it appears from the evidence, was acting, whether by her direction or not, *was acting* for her, did say to Dr. Wood, I believe, who made the chemical analysis in Boston, that it was made for the benefit of the family, and he was not to disclose what he found on that occasion. There is no evidence that there was any written report made by him of that analysis, but I think the evidence discloses that he stated that Mr. Bartholomew told him that what he had discovered in regard to this analysis was for the benefit of the family and was not to be disclosed. If you find that there was any material fact held back by Mr. Bartholomew, or by his direction, and that he was acting for this plaintiff, with her knowledge and assent—in other words, if you find that there is sufficient to charge her with any lack of fairness or honesty in this regard in her dealings with this company, then you have the right to say that this condition precedent was not fulfilled. But the more important question—the one regarding which there has been the most discussion, and, I think, the principal question—is, Did the insured, Frank Edwards, upon the 19th of June, 1882, take his own life? If he did, then there being no question of insanity in the case, this policy is null, void, and of no effect, and the plaintiff cannot recover, and that is the ques-
158 tion to which you should address your careful consideration.

Briefly, what are the facts, and the facts first about which there is, apparently, little dispute?

(Here follows a statement of the evidence, which it is deemed unnecessary to print.)

The defendant insists that Edwards committed suicide by taking hydrocyanic or prussic acid upon the 19th day of June, 1882, and they base that theory upon the evidence of the analysis of the contents of the stomach, and they say further, as a motive, or as two motives, for the act, first, that he was in embarrassed circumstances; that he had failed in 1880; that some of his creditors were unpaid, and that his circumstances financially were hopeless. They also say that, having just previous to this occasion contracted large insurances, amounting in all to $84,000, *that* it was practically impossible for him with his small salary of from $1,200 to $1,500, and the other sources of income which he had, to have kept up the premiums—in other words, that being insolvent, hopelessly insolvent, and unable to keep up the premiums, he committed suicide in order to give his family and this assured the benefit of the insurance.

That, I think, gentlemen, fairly states the theory of the defendants. Upon the other side it is said that here was a young man of genial temperament, with many friends, belonging to several organizations in his village, beloved by all, with a taste for social life, living in perfect accord with his wife and family, being in good health, and it is insisted upon the part of the plain-
159 tiff that there was no motive for this desperate act. They assert that there is no evidence that by any act, word, or

deed, either before this day or on this day and up to within an hour or two before this act is alleged to have been committed, Edwards indicated that he intended to take his own life.

And, gentlemen, I shall say to you in answer to a suggestion that has been made, that even if you find that there was prussic acid or hydrocyanic acid sufficient to have occasioned death, that alone is not sufficient to defeat the policy, unless you find that he voluntarily took it into his stomach. In other words, if the presence of the acid in the stomach can be accounted for by a mistake—that is, was given to him under a mistake, if he called for one prescription and got another, if it was entirely beyond his control and he unknowingly received this poison into his stomach, that would not be sufficient under this clause of the policy which speaks of suicide to defeat the plaintiff in this action. The two questions for you to decide, and to which I have already called your attention, but to which in closing I will again advert, are, first, Did this plaintiff conceal, fraudulently conceal, or conceal in any way, any material fact which it was her duty to present to this defendant? Did she do so herself or did she by any of her duly authorized agents or attorneys so conceal any material fact? If she did, then the condition precedent alluded to was not fulfilled upon her part. Secondly,
160 did Edwards commit suicide; did he voluntarily take this poison? If you find that he did, if you find that he took this poison knowing what he was doing, and that it was not a mistake of which he had no notice whatever, then that part of the contract was not fulfilled, and the policy is null and void. If, on the contrary, you find there was no concealment and that he did not die by suicide, but died of apoplexy, as was stated by the physician who first examined him, then you are at liberty to find a verdict for the plaintiff. If you find for the defendant upon either of these issues, it is still conceded that the plaintiff is entitled to a verdict of $180.28. If you find both of these issues in favor to the plaintiff, your verdict will be for $5,387.50.

I should say that requests to charge have been handed me by the defendant, and I decline to charge other than I have charged, and give the defendant an exception to each refusal.

Mr. FIELD: I desire to take one exception. I desire to except in this case to all that part of the charge in which your honor charged in reference to his suicide having come by mistake. I except to that for the reason that there is no evidence in the case that there was any mistake or accident.

The COURT: No; there is no evidence as to how it was taken. I simply meant to say (I don't know that I made myself clear on that subject) that if the jury should find that without any knowl-
161 edge on his part, and by a mistake of which he knew nothing, this poison was received into his stomach, it was not such suicide as was contemplated by the policy, and the policy would not be void in that event.

Mr. FIELD: Your honor will allow me an exception to that as charged and as modified?

The COURT: Yes, certainly.

Mr. FIELD: I except further to your honor's charge where you say that even if they should find that prussic acid caused his death, and all that, even that would not be sufficient to defeat the policy. I understood you to say that even if they should reach the conclusion that his death came by prussic acid that of itself——

The COURT: Oh, yes.

Mr. FIELD: I except to that part of it; also to all that part in regard to the filing of the service of the proofs we except to.

Mr. COGSWELL: I ask your honor to charge what is perhaps covered by the charge, but it is so well expressed in the case in the court of appeals that I think I will ask your honor to charge it: That when the dead body of the insured is found under such circumstances, and with such injuries that death may have resulted from accident or suicide, the presumption is against suicide as contrary to the general conduct of mankind and a gross moral turpitude, and not to be presumed in the case of a sane man, and
162 that is the case of Malory against this insurance company.

The COURT: I charge, then, that the presumption is against suicide.

Mr. FIELD: I except to that part of it.

Then the jury, at 5.45, retired for deliberation, and returning into court at 6.15 rendered a verdict in favor of the plaintiff in the sum of $5,783.50.

The following are the written requests which were submitted to the court, and to which the court alluded at line 3, page 169:

First. That the plaintiff was bound under the terms of *their* contract, on the request of the defendant, to furnish the company the results of the analysis of the stomach, as made by Dr. Harris & Prof. F. Woods, or a copy of it, and that having neglected to do this there was concealment and fraud within the meaning of the contract, and the plaintiff is not entitled to a verdict.

Second. That if Frank Edwards voluntarily took cyanide of potassium, or any form of prussic acid, then the defendant is entitled to a verdict.

Third. That if the jury believe Frank Edwards voluntarily took poison, then the defendant is entitled to a verdict whether there was any motive or not for his committing suicide.

Three and ½. That the question of motive is not to be considered under the contract in this action.

163 Fourth. That the evidence in the case as to the mode of death chosen by Frank Edwards is so clear and positive that the jury are not to indulge in any presumptions whatever, and that the facts are sufficient to overcome any presumption that Frank Edwards did not commit suicide.

Fifth. That the jury are to decide this case wholly upon the evidence in this case; are not to base their judgment upon any sympathy for the plaintiff; not upon any prejudice against the defendant.

Sixth. That under the undisputed evidence in this case the jury must find a verdict for the defendant under the facts alleged in the second separate answer.

Seventh. That by reason of the uncontradicted evidence under the sixth exception the plaintiff is not entitled to recover a verdict, except for the sum of $180.28.

The court remarked in regard to the foregoing as follows:

All that I decline to charge, except as I have charged, and I give now an exception to the refusal.

And now, because none of the said exceptions, offers, requests, or decisions so offered, made, and excepted to as aforesaid to the rulings, opinions, and decisions of the said judge do appear upon the record of said trial, therefore, on the prayer of the said defendant, by his said counsel, the judge, Hon. A. C. Coxe, hath to this bill of exceptions set his hand and seal, according to the statute and
164 the rules and practice of this court in such case made and provided, this 22d day of May, one thousand eight hundred and eighty-four.

ALFRED C. COXE. [SEAL.]

HENRY M. FIELD,
Attorney for Defendant, Canandaigua, New York.
HENRY M. FIELD,
Of Counsel.

(Endorsed:) U. S. circuit court. Law. No. 2506. Catherine L. Edwards *vs.* The Travelers' Insurance Company of Hartford, Conn. Bill of exceptions made by def't's atty. H. M. Field, attorney for defendant, Canandaigua, N. Y. Filed May 22, 1884. Wm. S. Doolittle, clerk.

165 United States Circuit Court, Northern District of New York.

CATHARINE L. EDWARDS

vs.

THE TRAVELERS' LIFE INS. COMPANY.

Henry M. Field, for defendant; William N. Cogswell, for plaintiff.

COXE, *J.:*

This action is upon a policy of life insurance.

At the January circuit the plaintiff had a verdict.

The defendant now moves for a new trial.

On the trial the principal contention had reference to the defence of suicide.

The defendant succeeded in proving that the insured died in circumstances peculiar and suspicious in many of their aspects. The precise cause of death was left to conjecture. Stated as strongly for the defendant as the evidence warrants, the facts were, perhaps, sufficient, had the jury adopted the defendant's theory, to justify them in the presumption that the insured took his own life. They did not so find, and their verdict must be regarded as conclusive upon this issue. It is insisted that the court should have charged, as requested, that the evidence was clear and positive that the insured committed suicide. I cannot adopt this view. The evi-

dence was not clear and positive. The insured might have
166 died from the effects of poison, and he might have died from apoplexy produced by excessive heat. The defendant proved that ninety-six hours after death prussic acid was found in his stomach. Whether there was enough to produce death could only be presumed. No quantitative test was made. Assuming, however, that he died from prussic-acid poisoning, there was no evidence as to how it was taken or that it was taken knowingly. But it is argued that whether taken ignorantly or designedly is wholly immaterial, and that the court fell into error in charging the jury that in order to reach a verdict for defendant they must find not only that there was poison sufficient to cause death, but also that the insured took it knowingly and not by mistake. No authority is produced sustaining this position, which seems wholly at variance with justice and common sense. Test it by an illustration:

A sportsman is shot to death by the accidental discharge of his own fowling-piece; a woodman is killed by the premature fall of a tree which he himself has felled; an infectious cut from his own scalpel causes the death of an anatomist. Strictly speaking, each dies by his own hand, but can it be seriously maintained that a life policy, providing that it shall be void if the insured "shall die by suicide," whether the act be voluntary or involuntary, would be avoided in such circumstances? No court has yet enunciated a doctrine so untenable, and it is believed none ever will. Life insur-
167 ance is intended to cover just such risks; its chief benefits are found in cases of sudden death. But the precise question was determined by the court of appeals in Penfold *v.* Universal Life Ins. Co., 85 N. Y., 317.

The plaintiff offered in evidence a receipt for the first annual premium, but relying on certain admissions of the answer, did not produce the policy of insurance.

Defendant objected to the receipt unless read in connection with the policy, and the refusal of the court to so rule is alleged as error.

The answer is two-fold: First, it was not incumbent on the plaintiff under the pleadings to produce the policy; and, second, the question at best relates only to the order of proof, and as the policy was subsequently offered and the jury properly instructed as to the burden of proof the mistake was cured, assuming that there was a mistake.

A new trial will hardly be granted, because the defendant offered in evidence a paper which the plaintiff should have offered.

It is also argued that there was a fraudulent concealment of certain facts by the plaintiff, and that the court should have so declared.

Regarding this proposition, it is sufficient to say that all the evidence there was upon this subject, and there was but little, was submitted to the jury with instructions as favorable to the defendant as it could fairly ask.

The other defences are of a formal and technical character,
168 and relate to the alleged failure of the plaintiff to give immediate notice, in writing, of the death of the insured, and

to furnish proofs of death in accordance with the strict letter of the contract. No attempt will be made to conceal the fact that such defences do not commend themselves to the court; they in no way involve the merits, and it is not easy to see how the omissions referred to injured the defendant or impaired any of its right. True, the parties entered understandingly into the agreement, and if the court is clearly satisfied that it has been violated, even in an apparently unimportant particular, it should so say; but where a life insurance company seeks to avoid the sacred obligations which it has assumed, because, for instance, a fact is communicated to it, orally instead of in writing, the court should be very sure of the rectitude of such a defense before permitting it to succeed.

These policies are prepared with great care by those in the company's employ. They are surrounded by agreements and warranties innumerable—a labryinth of conditions, where one heedless or uninformed may easily go astray. To construe these contracts narrowly and illiberally is not the policy of the courts; a strict construction would often work injustice to both parties alike. To the insured, by permitting non-essentials to defeat an equitable claim; to the insurer, by shaking the confidence of the people in the system of life insurance.

169 The condition here alleged to have been violated is in these words:

"That in the event of the death of the person insured then the party assured, or his or her legal representatives, shall give immediate notice, in writing, to the company at Hartford, Conn., stating the time, place, and cause of death, and shall, within seven months thereafter, by direct and reliable evidence, furnish the company with proofs of the same, giving full particulars, without fraud or concealment of any kind."

The facts are as follows: The insured died June 19th, 1882. A day or two afterwards E. M. Philips, who is described in the receipt referred to as "agent of this company at Southbridge, Mass.," met one of the family of the deceased on the street, informed him that he was going to Hartford and would give the company the requisite notice, and would procure the necessary blanks for the proofs of death. He did go to Hartford on or about the 21st of June, saw the secretary of the company, gave him notice of the death, stating all the particulars which he then knew, and obtained the blank proofs. On his return he handed the blanks to one of the plaintiff's representatives, saying at the time, "When you get them completed I want you to return them to me." They were filled out and delivered to him July 3d, 1882. He retained them for several months, and then returned them to a brother of the plaintiff, saying that they were incomplete, and demanded additional information. On the 29th of January, 1883, they were again delivered to Phil-

170 ips, and by him sent to the company on or about the 7th of February. The company, in acknowledging their receipt, made no objection that they were received too late and retained them in its possession. They were produced on the trial by the defendant's counsel.

It must be held that if the plaintiff has not followed the contract literally in these particulars, it was because she was misled by the course of the defendant, and that the defendant is not now in a position to take advantage of the plaintiff's omission, having waived a strict performance of the contract.

I have examined the other exceptions argued, but do not think any of them well taken.

The motion for a new trial is denied.

(Indorsed:) Decision. Original filed June 27, 1884. Wm. S. Doolittle, clerk.

171 *U. S.* Circuit Court of the United States for Northern District of New York.

CATHERINE L. EDWARDS

vs.

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.

To the honorable the Supreme Court of the United States:

The petition of the above-named The Travelers' Insurance Company of the City of Hartford, in the State of Connecticut, the defendant in the above-entitled action, respectfully states and shows—

I. That in a certain action pending in the circuit court above named, between Catherine L. Edwards, the above-named plaintiff, and The Travelers' Insurance Company as defendant, being an action at law upon a certain policy of insurance, the said plaintiff, on the 11th day of July, 1884, duly obtained final judgment in said action against said defendant for the sum of five thousand nine hundred and twenty-three dollars and thirty-three cents damages, interest, and costs, and which said final judgment was filed and docketed with the clerk of said circuit court in his office in the city of Utica.

II. That your petitioner *are* advised that errors were committed upon the trial of this action, and that the said judgment so as aforesaid recovered and obtained then was and is erroneous and contrary to law and the evidence, and ought not to remain as a judgment against *them* by reason of said errors.

172 Now, therefore, your petitioner, The Travelers' Insurance Company, now come and pray this honorable court that a writ of error in due form and under seal and in accordance with the rules and practice of this court be duly granted and directed to said circuit court, and duly requiring and commanding the said court to send the record in this cause and all proceedings had in said circuit court, with all things concerning the same, to this honorable Court, and that the said judgment be reversed and wholly set aside by this honorable Court, to the end that the said defendant, your petitioner, may have such other decree in the action as may be just.

And your petitioner will ever pray, &c.
Dated 14th July, 1884.

THE TRAVELERS' INSURANCE CO.,
By J. G. BATTERSON, *Pres't.*
[SEAL.] JOHN E. MORRIS, *Ass't Sec'y.*

——— ———,
Attorney for Defendant, Canandaigua, N. Y.

(Indorsed:) Petition that a writ of error be granted. Filed July 26, 1884. Wm. S. Doolittle, clerk.

173 In the Circuit Court of the United States for [the] Northern District of New York.

CATHERINE L. EDWARDS

vs.

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.

Know all men by these presents that we, The Travelers' Insurance Company of Hartford, Connecticut, as principal, and James G. Batterson and Ebenezer Roberts, both of the city of Hartford aforesaid, as sureties, are held and firmly bound unto Catherine L. Edwards, of Rochester, in the county of Monroe and State of New York, in the sum of fifteen thousand dollars, to be paid to the said Catherine L. Edwards, her executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this fourteenth day of July, A. D. 1884.

Whereas the above-named The Travelers' Insurance Company of Hartford, Conn., is about to prosecute a writ of error from the Supreme Court of the United States to reverse the judgment of the circuit court of the United States for the northern district of New York, in the second circuit, in a certain action, in which the said
174 Catherine L. Edwards was plaintiff and the said Travelers' Insurance Company was defendant, and in which said action a judgment has been rendered in said circuit court in favor of the said Catherine L. Edwards and against the said The Travelers' Insurance Company for five thousand nine hundred and twenty-three dollars and thirty-three cents, damages, interest, and costs, and the record thereof filed with the clerk of the said circuit court at his office, in the city of Utica, on the eleventh day of July, one thousand eight hundred and eighty-four:

Now, therefore, the condition of this obligation is such that if the above-named The Travelers' Insurance Company shall prosecute its said writ of error to effect and *to* answer all costs and damages, including the whole amount of the said judgment, just damages for delay, and costs and interest on the writ of error, if it shall fail to

make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE TRAVELERS' INSURANCE CO.,
By J. G. BATTERSON, *Pres't.*
JAMES G. BATTERSON. [SEAL.]
EBENEZER ROBERTS. [SEAL.]

175 UNITED STATES OF AMERICA.

STATE OF CONNECTICUT, } ss:
City and County of Hartford, }

On this 22d day of July, A. D. 1884, before me personally came James G. Batterson, the president of the Travelers' Insurance Company, and to me personally known, and who, being by me first duly sworn, did depose and say that he resided in the city of Hartford aforesaid; that he was the president of the said Travelers' Insurance Company; that he knew the corporate seal of said insurance company; that the seal affixed to the foregoing and annexed obligation was such corporate seal; that it was so affixed by order of the directors of said company, and that he signed his name thereto by the like order as president of the Travelers' Insurance Company.

[L. S.] E. E. MARVIN,
U. S. Circuit Court Com'r, District of Connecticut.

UNITED STATES OF AMERICA.

STATE OF CONNECTICUT, } ss:
City and County of Hartford, }

On this 22d day of July, A. D. 1884, before me, the undersigned, personally appeared James G. Batterson and Ebenezer Roberts, the two sureties, who are the same persons named in and who subscribed and executed within and forgoing obligation, and who are to
176 me personally known, and severally acknowledged that they executed the same for the uses and purposes as therein expressed.

[L. S.] E. E. MARVIN,
U. S. Circuit Court Com'r, District of Connecticut.

UNITED STATES OF AMERICA.

STATE OF CONNECTICUT, } ss:
City and County of Hartford, }

James G. Batterson and Ebenezer Roberts, both of the city of Hartford, and who are the two surities named in the foregoing obligation, being each duly and severally sworn, each for himself says: I am a freeholder and resident in the county of Hartford, in said State, and that I am worth fifteen thousand dollars over and above all debts or liabilities I owe or have incurred and property exempt *for* sale on execution.

Subscribed and sworn to before me on this 22d day of July, A. D. 1884.

[L. S.] E. E. MARVIN,
U. S. Circuit Court Com'r, District of Connecticut.

(Indorsed:) Supersedeas bond. Penalty, $15,000.

I approve of the within bond as to its form and its sufficiency of the sureties, to operate as a supersedeas.

July 26th, 1884.

ALFRED C. COXE.

Filed July 26, 1884.

WM. S. DOOLITTLE, *Clerk.*

177 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the northern district of New York, in the second circuit, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court of the northern district of New York before you, between Catherine L. Edwards, plaintiff, and the Travelers' Insurance Company of Hartford, Conn., defendant, a manifest error hath happened, to the great damage of the said The Travelers' Insurance Company, as by its complaint appears, we, being willing that the error should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so
178 that you may have the same at Washington on the 13th of October, one thousand eight hundred and eighty-four, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 26th day of July, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal of the U. S. Circuit Court, Northern District, N. Y.]

W. S. DOOLITTLE, *Clerk.*

HENRY M. FIELD,
Attorney for Plaintiff in Error, Canandaigua, N. Y.

179 [Endorsed:] 2506. Supreme Court of the United States. The Travelers' Ins. Co., plaintiff in error, *vs.* Catherine L. Edwards, defendant in error. Writ of error. The within writ allowed. July 26, 1884. Alfred C. Coxe. [Stamped:] U. S. circuit court, N. D. of N. Y. Filed July 26, 1884. Wm. S. Doolittle, clerk.

180 UNITED STATES OF AMERICA, *ss.:*

To Catherine L. Edwards, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 13th of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein The Travelers' Insurance Company of Hartford, Conn., is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 26th day of July, in the year of our Lord one thousand eight hundred and eighty-four.

ALFRED C. COXE.

181 [Endorsed:] At Law. No. 2506. Supreme Court of the United States. The Travelers' Ins. Co., pl'ff in error, *vs.* Catherine L. Edwards, def't in error. Citation. W. M. Field, att'y for pl'ff in error. [Stamped:] U. S. circuit court, N. D. of N. Y. Filed July 31, 1884. Wm. S. Doolittle, clerk.

182 Supreme Court of the United States.

THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.,
Plaintiff in Error,

vs.

CATHERINE L. EDWARDS, Defendant in Error.

UNITED STATES OF AMERICA.

NORTHERN DISTRICT OF NEW YORK, } *ss:*
County of Ontario, }

I, Henry M. Field, attorney for the plaintiff in error, being duly sworn [on] oath, depose and say that on the 29th day of July, A. D. 1884, at the city of Rochester, in said district, I personally served the citation granted herein by Hon. A. C. Coxe, and dated the 26th day of July, 1884, upon Sardens D. Bentley, one of the attorneys for said Catherine D. Edwards, defendant in error, by delivering to and leaving with said Bentley personally, on the day and at the place aforesaid, copy of said citation.

And I further say that I know the said Bentley so served
183 to be one of the attorneys for the said defendant in error in the within-entitled action.

HENRY M. FIELD.

Subscribed and sworn to before me on this 30th day of July, 1884.

[Seal J. Henry Metcalf, Notary Public, Canandaigua, N. Y.]

J. HENRY METCALF,
Notary Public for said County.

184 [Endorsed:] 2506. U. S. Supreme Court. Travelers' Ins. Co., pl'ff in error, *vs.* Catherine L. Edwards, def't in error. Affidavit of service of citation herein. [Stamped:] U. S. circuit court, N. D. of N. Y. Filed July 31, 1884. Wm. S. Doolittle, clerk.

185 UNITED STATES OF AMERICA, *Northern District of New York,* } *ss:*

I, William S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 187, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Catherine L. Edwards against The Travelers' Insurance Company of Hartford, Conn., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this 25th day of August, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the said United States the one hundred and ninth.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE, *Clerk.*

Endorsed on cover: N. New York C. C. U. S. No. 296. The Travelers' Insurance Company of Hartford, Conn., pl'ff in error, *vs.* Catherine L. Edwards. Filed 15th September, 1884.

122-457

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 296.

THE TRAVELERS INSURANCE COMPANY OF HARTFORD, CONNECTICUT,

PLAINTIFF IN ERROR,

v.

CATHERINE L. EDWARDS.

BRIEF FOR PLAINTIFF IN ERROR.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 24 FRANKLIN STREET.
1887.

Supreme Court of the United States.

NO. 296.

THE TRAVELERS INSURANCE COMPANY OF HARTFORD, CONNECTICUT, *Plaintiff in Error,*

v.

CATHERINE L. EDWARDS.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The suit below was originally brought in the Supreme Court of the State of New York for the county of Ontario, and was duly removed to the United States Circuit Court for the Northern District of New York. It was brought to recover damages for breach of a contract exhibited in a policy of insurance, whereby the Travelers Insurance Company insured the life of Frank Edwards in a certain sum, payable to Catherine L. Edwards, upon certain conditions fully set forth in said policy. Trial was had before a jury, and a verdict was rendered for the plaintiff, and the questions now arising are whether the plaintiff below complied with those conditions of the policy which required written notice to the company of the death of the deceased, and proofs of the same within seven months thereafter; whether the action was prematurely brought by reason of the plaintiff's failure to comply with such conditions of the policy before bringing suit; and whether certain details of evidence bearing upon the foregoing questions were properly admitted against the objection of the company.

The cause is now brought before this court on writ of error to rulings of the Circuit Court adverse to the plaintiff in error, upon the points above stated.

Assignment of Errors.

The Circuit Court erred, —

1. In that it admitted testimony relating to the acts and statements of Mr. E. M. Phillips, the local agent of the insurance company at Southbridge, Mass., with reference to the notice of death to be given by the defendant in error to the insurance company and the delivery and reception of the proofs of death, as binding the company and affecting the rights and duties of the parties to the contract of insurance, it not appearing that Phillips had authority to represent or bind the company in this regard. (Record, pp. 22, 23, 28, 29, 58, 77).

2. In that the Court charged the jury as follows: "If upon this evidence you find that upon the 3d of July, or during the seven months limited by the contract, the proofs of death which have been referred to were served upon Mr. Phillips, who was held out by this company to be its agent under the circumstances detailed in this case, — that is, if you believe that he stated to the representatives of this assured that the proofs were to be left with him, and served upon him and not upon the company, then, I say, for the purposes of this case, that that was sufficient service upon the company within the provisions of the contract." (Charge, p. 79).

3. In that it refused to rule that the defendant in error had not furnished evidence of the notice of death required by the policy, inasmuch as there was no evidence that any notice in writing was given to the company after the death of Edwards, or that proofs of death were furnished to or served upon the company, and within seven months of his death, as required by the policy. (pp. 29, 77, 78).

4. In that the Court declined to charge the jury as follows: "That under the undisputed evidence in this case the jury must find a verdict for the defendant under the facts alleged in the second separate answer." (p. 82). (Second separate answer, p. 3.)

5. In that it refused to rule that the suit was prematurely brought, because the plaintiff below had not at the time furnished due notice and proofs of death as required by the policy, and ninety days thereafter had not elapsed. (p. 78).

BRIEF.

The errors assigned raise substantially the same question and they may therefore be conveniently considered together.

It appears that the life of Frank Edwards was insured by a policy issued by the plaintiff in error, which was in force on June 19, 1882, the day of his death.

The policy was issued and accepted upon certain express agreements therein contained, which were conditions precedent to the contract, and compliance with which was essential to recovery under it (p. 29).

One of these agreements was as follows (pp. 31, 32): —

"*Eighth.* That in the event of the death of the person insured, then the party assured, or his or her legal representatives, shall give immediate notice in writing to the company at Hartford, Conn., stating the time, place, and cause of death, and shall within seven months thereafter, by direct and reliable evidence, furnish the company with proofs of the same, giving full particulars, without fraud or concealment of any kind."

It became necessary, therefore, for the defendant in error to prove that she had fulfilled these conditions of the contract by furnishing to the company both the written notice and the proofs of death, described in the preceding paragraph.

This obligation the defendant undertook to satisfy by showing that she furnished the notice and proofs required to E. M. Phillips, an agent of the company at Southbridge, Mass., claiming that notice to Phillips was notice to the company.

The question then arises, Did Phillips so represent the company that notice to him was notice to the company?

The evidence bearing upon this question, which was to a large extent undisputed, was substantially as follows: —

The plaintiff below introduced the receipt given by the company for the first annual premium upon the policy (p. 21). This receipt was signed by the secretary of the company at Hartford. On the margin were these words: —

"The Travelers Insurance Company of Hartford The agent who receives the within premium should countersign this receipt, and

invariably state over his signature the date at which the payment is made to him."

The foregoing receipt was written and countersigned across the face as follows: —

"The within premium received and this receipt countersigned by me this twenty-fourth day of May, one thousand eight hundred and eighty-two.

"E. M. PHILLIPS,
"*Agent at Southbridge, Mass.*"

The receipt was indorsed as follows: —

"All policies and agreements made by this company are signed by its president or secretary. No other person can alter or waive any of the conditions of the policies or issue permits of any kind or make agreements binding upon said company.

(Signed) RODNEY DENNIS, *Secretary.*" (p. 21.)

There was also evidence tending to show (p. 22) that one Bartholomew, who subsequently acted as agent for the assured, met Mr. Phillips in Southbridge; that Phillips informed him that Edwards was insured in the Travelers Company, and that he, Phillips, was going to Hartford and would give to the company the notice of his death, and would procure the blanks for the proofs of loss; that Phillips said that it would do as well for him to give the notice to the company in that way as for any party interested; that Phillips soon after met Bartholomew at Southbridge; said he had been at Hartford, and delivered to Bartholomew the blanks; and that Phillips said: "When you get them (*sc.* the papers) completed I want you to return them to me." The evidence tended to show that these papers were delivered to Phillips on July 3, 1882. They were produced by the company at the trial (pp. 23–26) and then bore the following indorsement: —

"No. 38527. File No. —— Amount $5,000.

Proof of loss on life of Frank Edwards, of Southbridge, Mass. Life Department. Travelers Insurance Co., of Hartford, Conn. The —— day of ——, 18 —.

"Have computed interest on this policy, commencing on the third day of October, 1882, up to 18th of January, 1884, at six per cent, and the amount is $387.50. The whole amount of principal is $5,387.50."

The policy was put in evidence. The body of it contained the paragraph previously quoted, relating to notice, and also the following (p. 32) : —

"NOTE. — Agents of the company are not authorized to make, alter or discharge contracts, give credits, grant permits or waive any of the conditions of this policy."

Mr. Phillips testified (pp. 56–59) that he was local agent of the Travelers Insurance Company in Southbridge; that his duties with reference to the life department were to receive applications and collect premiums; that Edwards applied to him for a policy; that he received the application, obtained a policy from the company, and delivered it to Edwards; that after the death of Edwards he had a conversation with Bartholomew; told him that he was going to Hartford; said that he would notify the company of the death of Edwards; that he did go to Hartford and informed the company orally of Edwards' death, with such particulars as he knew at the time; that the company gave him blank proofs; that he brought these to Southbridge and delivered them to Bartholomew; that they were returned to him filled up not long afterwards; that some months after he returned them to Edwards as being incomplete, and that they were subsequently left again at his office in his absence. The date when the proofs were for the last time so left at Mr. Phillips' office is fixed by a letter accompanying them to be Jan. 29, 1883 (p. 59). Mr. Phillips forwarded them to the company on Feb. 7, 1883 (p. 59), and they were received by the company at Hartford on or about Feb. 9, 1883.

Dr. John B. Lewis testified (p. 60) that he was in the employ of the company at Hartford; that he had charge of the claim department, and that all papers relating to claims arising under death losses passed before him; that the first written communication which the company received after the death of Edwards was received early in February, 1883, being the letter of Agent Phillips inclosing

certain papers from the Edwards family; that no notice, proof or written communication was ever received by the company prior to this letter (p. 63).

Subsequent to the reception by the company of the papers forwarded on Feb. 7, by Mr. Phillips, and prior to the commencement of the suit, no other communications which are material as affecting the rights of the parties passed between them except that on Feb. 9 the company acknowledged to Phillips the receipt of the papers sent on Feb. 7, and requested of him a full report of the chemical analysis of the stomach of Edwards (p. 60), and that Mr. S. K. Edwards, acting for the assured, was informed of this acknowledgment and request on March 13.

It does not appear that such a report was ever furnished.

Dr Lewis also testified that Agent Phillips had no authority in the life department other than to receive applications for life insurance, forward them to the company, deliver the policy, if written, and collect and report the premium to the company (p. 60).

Now this evidence fails to show that the defendant in error complied with the conditions of the policy in respect to notice, because,—

First. It does not appear that written notice of the death was given to the company. It was not even given to Phillips.

Second. As matter of law, it fails to show that Phillips had authority to receive notices in behalf of the company.

Such authority must be proved affirmatively, and there is no evidence that it existed.

In the first place, there is no direct evidence of it. Phillips's duties, as testified to by himself and by his superior, Dr. Lewis, do not confer or imply it. They are strictly defined and limited, and do not include the authority claimed.

His own declarations, as such, are not competent to prove it; and there is no evidence that any declarations or acts of his in excess of his authority, as strictly defined by himself and by the company, were ever ratified by the company, or even brought to its knowledge. The indorsement placed upon the proofs of death at Hart-

ford is purely clerical, and even if assumed to be placed there by direction of the company has no legal significance.

It was not communicated to the assured, and was a mere private memorandum. Nothing can be inferred from it prejudicial to the company.

Nor can the required authority be inferred from the general scope of employment of Mr. Phillips. There is a complete failure of evidence in this regard. It does not appear that he had any general duties or discharged any other than those limited ones heretofore considered.

Therefore, the only deduction possible from all this testimony, as matter of law, is that Phillips was not a general but a special agent of the company, with duties and authority strictly limited to one branch of its business, viz., the life department, and, in that, to receiving applications for insurance, forwarding such to the company, delivering the policy, if written, and collecting the premium. He had no authority to represent it in any other regard, and consequently he had no authority to accept notices for the company. This power the company had chosen to reserve to itself.

But not merely did the company not hold out Phillip as an agent possessed of general authority; it took especial care to warn those who dealt with it and with its agents that the authority of its agents was limited, and to put those having business with it on their inquiry as to the extent of that authority. This appears by the indorsement on the premium receipt before mentioned (p. 21), and by Note embodied in the policy of insurance (p. 29). In both these cases the language calls attention to the limitation of the authority of the agent in particulars closely allied to that material to the present discussion, and to the fact that the agent could not dispense with a strict compliance with the contract.

Therefore, it is submitted that the Court erred when it ruled that service of notice upon Phillips and delivery of proofs to him was service upon and delivery to the company, and admitted evidence of such service and delivery, and especially erred in using the following language in the charge to the jury: "If you believe that he (Phillips)

stated to the representatives of this assured that the proofs were to be left with him, and served upon him, and not upon the company, then I say for the purposes of this case, that that was sufficient service upon the company within the provisions of the contract."

This language appears to involve the proposition that agency can be established simply by the declarations of the agent. It was certainly likely to mislead the jury, and to lead them to believe that they could find that Phillips had authority to receive notice for the company simply from his own assertions.

It follows, also, if the contention of the plaintiff in error is sound, that the Court should have ruled that the defendant in error had not furnished evidence of the notice of death required by the policy, inasmuch as no notice in writing was given to the company after the death of Edwards, and no proofs of death were furnished to or served upon the company within seven months of his death as required by the policy; that the Court should have ordered a verdict for the defendant under the facts alleged in the second separate answer; and, also, presenting the same conclusion in another aspect, should have ruled that the action was prematurely brought, inasmuch as it was not brought ninety days after due notice and proof as required by the policy.

Although the rulings of the court below relate to the effect of notice to Phillips as affecting the company and this brief has consequently discussed the case in that aspect, it may be proper to call attention to the fact that there is no claim that written notice of death was delivered to the company itself at Hartford, as distinct from Phillips, nor were proofs of loss furnished to the company itself, as distinct from Phillips, within seven months of the death of the assured. The defendant in error must therefore rely and rest upon the notices given to Phillips as being notices given to the company.

The error heretofore considered, strictly stated, is the error in ruling that Phillips so represented the company that notice to him was notice to the company. Waiver of the conditions of the policy relating to notice and proofs of death is not pleaded by the defendant in error and was not made an issue at the trial, and, it is submitted, is not now open to discussion, but lest it may be claimed to be implic-

itly involved in the rulings discussed it seems proper to observe that there is no evidence of waiver of these conditions by the company.

These conditions could not be waived for the company by Phillips. He was expressly limited in this respect by the premium receipt and by the policy, and this limitation was thus brought to the notice of the assured.

The company itself did not waive these conditions. It was simply silent, except that after the assured had failed to furnish proofs of death within seven months, it asked for the analysis of the stomach of the deceased. It did no act by which the assured was misled or her position affected. It is suggested that the company in acknowledging the receipt of the proofs made no objection that they were received too late, and retained them in its possession. It is submitted that they were under no obligation so to inform the assured or to return the proofs. It does not appear that failure to do either of these things either did or could mislead the assured or affect her rights as matter of law.

Massachusetts was the *locus contractus*, and the law of Massachusetts should govern the construction of the contract if different principles prevailed in different jurisdictions; but the law herein applicable, as administered by this court and by the courts of Massachusetts and New York, is the same, and, it is submitted, supports the position of the plaintiff in error.

Lohnes *v.* Ins. Co., 121 Mass. 439.
Shawmut Sugar Refining Co. *v* Ins. Co., 12 Gray, 439.
Tate *v.* Ins. Co., 9 Allen, 231.
Markey *v.* Ins. Co., 103 Mass. 93.
Ins. Co. *v.* Wolf, 95 U. S. 326.
New York Life Ins. Co. *v.* Fletcher, 117 U. S. 519.
Bush *v.* Ins. Co., 63 N. Y. 531.
Van Allen *v.* Ins. Co., 64 N. Y. 469.
Walsh *v.* Ins. Co., 73 N. Y. 5.
Marvin *v.* Ins. Co., 85 N. Y. 278.
Cole *v.* Ins. Co., 99 N. Y. 36.

SOLOMON LINCOLN.

122-457

Supreme Court of the United States,

OCTOBER TERM, 1886.

Number 296.

THE TRAVELERS INSURANCE COMPANY OF HARTFORD, CONNECTICUT,

Plaintiff in Error,

against

CATHARINE L. EDWARDS,

Defendant in Error.

Brief for Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

WILLIAM F. COGSWELL,
WILLIAM NATH'L COGSWELL,
Counsel for Defendant in Error,
ROCHESTER, N. Y.

Charles Mann, 8 Elm Park, Rochester, N. Y.

Supreme Court,

OF THE UNITED STATES,

October Term, 1886. No. 296.

THE TRAVELERS INSURANCE COMPANY
OF HARTFORD, CONNECTICUT,
Plaintiff in Error,

against

CATHARINE L. EDWARDS,
Defendant in Error.

Brief for Defendant in Error.

Writ of Error to the Circuit Court of the United States for the Northern District of New York.

HISTORY OF THE CASE.

The defendant in error, Catharine L. Edwards, was plaintiff in the Court below, and in this brief we shall designate the parties to the action as plaintiff and defendant as they were originally.

The action was brought to recover upon a policy of insurance issued by the defendant upon the life of Frank Edwards, payable to the plaintiff as beneficiary. The suit was originally commenced in the New York State Court, and was transferred into the United States Circuit Court by the defendant.

The cause was tried before Judge Coxe and a jury, and a verdict rendered for the plaintiff. A motion for a new trial was entertained and denied, and from the judgment entered thereupon a writ of error has been sued out from this Court.

The answer of the company admits the issuing of the policy and the death of Frank Edwards, the life insured.

It seeks to avoid payment by claiming that notice of the death of Edwards was not given to the company in writing, that the proofs of death were not served in time, and that Edwards committed suicide.

The question of suicide was fairly submitted to the jury by the learned Court, and its verdict is conclusive.

The other exceedingly technical defenses are the only ones that can now be urged.

Facts of the Case.

Briefly stated the facts are as follows:

Frank Edwards, the insured, died in Boston, June 19, 1882. The day after his death, A. J. Bartholomew, acting as the friend and adviser of Miss Edwards, the beneficiary named in the policy, met Mr. Phillips, the agent of the company, at Southbridge, Mass., in which town both Edwards and the beneficiary lived, and where the policy was issued, and notified him of the death of Mr. Edwards.

Mr. Phillips told Mr. Bartholomew that he was going to Hartford the next day, agreed to notify the company of the death of Mr. Edwards, and bring back the blank proofs of death to be filled out. Upon being asked by Mr. Bartholomew if that would be the same as though a representative of the family gave the notice, he said it would.

In accordance with his promise Mr. Phillips went to Hartford, notified the secretary of the company of the death of Mr. Edwards, received from him or some

other officer of the company at Hartford, the blank proofs, brought them back to Southbridge, and gave them to Mr. Bartholomew (page 58 of the printed record).

At the time he delivered the blanks to Mr. Bartholomew he told him when they were all filled out to return them to him. Mr. Bartholomew obeyed the instruction of the agent in that respect, but through some fault or carelessness on the part of Mr. Phillips, the proofs were not forwarded by him to the main office of the company at Hartford until more than seven months had elapsed after the death of Edwards.

The company retained the proofs of death, made no objection that they were received by it too late, and produced the same upon the trial. The principal questions in the case are: First, whether there was a compliance with the provision of the policy requiring notice of death in writing to be given to the company; and, second, whether the condition requiring proofs of death to be furnished within seven months after the death, was complied with.

There are, however, a few exceptions to evidence which we will consider first:

First.

The exception to the introduction of the receipt of the premium taken, at page 21 of the record, was not well taken.

This receipt recognizes Mr. Phillips as the agent of the company, and mentions him as such. The sole ground of objection was that the policy referred to in the complaint should be produced.

The policy and the receipt were entirely distinct, and this objection was properly overruled.

The policy, however, was subsequently received, which effectually cured the error, if any there was.

Second.

The conversation between Bartholomew and Phillips, the agent of the company, was admissible. The exception to this conversation is found at page 22 of the record.

The receipt already introduced in evidence states that Mr. Phillips was the agent of the company at Southbridge, Massachusetts. From all that had appeared up to this time in the case he had all the authority that would inhere to him as such agent, both to speak for and to bind the company by his acts. He delivered the policy, received the premium, countersigned the receipt, and was the only person connected with the company with whom either Edwards or the beneficiary had any dealings, and would naturally be the first person to whom the beneficiary or her representatives would apply to learn what was necessary to be done in regard to service of notices and proofs of death. His answers, within the apparent scope of his authority, bound the company.

Goodwin vs. Massachusetts Mutual Life Insurance Co., 73 N. Y., 480–490.

Insurance Company vs. Wilkinson, 13 Wallace, 222.

There is another answer to this objection: After the defendant took the case it called Phillips and by him proved the facts stated by Phillips to Bartholomew (pages 57, 58). If error was committed in receiving the conversa-

tion between these gentlemen as to what Mr. Phillips said he did, this was cured by the subsequent evidence of Mr. Phillips himself as to what he actually did, and a new trial will not on that account be granted.

Woodruff, Ex'r, vs. McGath, 32 N. Y., 255.
Hensler vs. Sefrin, 19 Hun (N. Y.), 564, 568.

Third.

The Plaintiff complied with the condition of the policy requiring her to give notice of the death ~~of the life~~ of the insured.

The object of this condition is that the company may know of the death of its insured soon after it occurs, so that it can investigate into the circumstances surrounding it. In this particular instance it received all the information that the beneficiary was able to give it, and by its acts and conduct led her to believe that this requirement of the policy was satisfactorily complied with. The agent of the company at the request of the representative of the beneficiary, and after the statement on his part that notice given by him would be just as effectual as if given by some representative of the family, informed the secretary of the company at Hartford of the death of Frank Edwards, giving him all the information that he or any one at that time had of the circumstances connected with his death. The company recognized this as a sufficient notice, by giving the agent blank proofs to be by him taken back and given to the beneficiary to be filled out, for the purpose of proving her claim. The agent took the blanks

back to Southbridge and gave them to the representative of the plaintiff. By thus receiving the verbal notice, by giving to its agent the blank proofs to be taken back and filled out, the company recognized this notice as a sufficient compliance with the conditions of the policy and should not now be allowed to say that the plaintiff cannot recover in this case because she did not go through the idle ceremony of giving a second notice in writing. By its conduct and acts it represented to the plaintiff that all that was necessary to be done was to have the blanks filled out in due form.

Fourth.

The defense that proofs of death were not served within seven months, as required by the policy, cannot be maintained successfully.

The proofs after having been given to Mr. Bartholomew by Mr. Phillips were in due time returned to him, but through some negligence on his part did not reach the company until more than seven months after the day of Edwards' death; and it is now claimed that that fact prevents a recovery on the part of the plaintiff in this action. There are three answers to this claim.

(*a*) In the first place, service upon the agent of the company was a compliance with the conditions of the policy requiring proofs of death to be "furnished to the company," entirely irrespective of the peculiar facts of this case. In the policy no place of service was mentioned and no person was designated. The company

was an intangible being acting through its officers and agents; and no particular officer being mentioned, the agent was the company as much as the president, secretary, or any other officer. The plaintiff had a right to suppose that by leaving the proofs with the agent she was complying with this condition. If the defendant desired that any particular officer should be furnished with the proofs at any particular place, it should have said so; and as it has not, she was justified in leaving the proofs with the agent. The business of insurance is carried on by agents of the companies scattered all over the country. They are the only persons with whom the insured or the beneficiary comes in contact. They deliver the policies, receive the premiums, deliver renewal receipts, and in ninety-nine cases out of one hundred receive the proofs of death and attend to all matters of detail after a loss has occurred. Such being the universal practice, if this insurance company required as a condition precedent that the proofs of death should be furnished to any particular person or at any particular place it should state so distinctly. The case of *Kendall vs. Holland Purchase Ins. Co.*, 2nd Thompson and Cooke New York Supreme Court Reports, 375, affirmed in the 58th N. Y., 682, is authority upon this point. That case was upon a policy of insurance containing a condition that persons sustaining damage by fire "are forthwith to give *notice to the company*." The insurance was effected through an agent located in the town adjoining that in which the insured property was situated. The policy was issued through him and contained an endorsement of his name as agent, placed thereon by the company. It was held that notice of loss to such agent was notice to the company. Judge Talcott in his opinion, at page 376, says:

"No objection was made to the form of "notice to McAvoy, the agent, but only "that the notice to him was not sufficient, "the defendant claiming that notice should "have been given at the office of the com- "pany in Batavia. McAvoy received the "notice and went with the plaintiff to ex- "amine the premises, without any sugges- "tion of want of authority, or that the "premises were outside of his jurisdiction, "or that notice should be sent to the office "of the company, or given to any other "agent. *The company could only act or re- "ceive notices through some officer or agent, "and we think the endorsement on the policy "that McAvoy was agent was notice to the "plaintiff that he might treat him as such.*"

(*b*) A second answer, however, is that in this particular case the company held Phillips out as the proper person to receive the proofs of death. After having been notified of the death of Mr. Edwards, it gave Mr. Phillips the proofs for the very purpose of taking them to the family to be filled out. By this act it indicated that the same person which delivered the blanks to the beneficiary to be filled out was the same person who should receive the blanks after they had been completed. By leaving the proofs with the agent the plaintiff complied literally with his directions, and the company is estopped from saying that the agent's instructions were unauthorized. They were within the apparent scope of his authority as agent, and the plaintiff relied upon them ; and if the agent was remiss in his duties to the company in not sending the proofs until after the time stipulated in the policy had expired, the defendant should suffer by his negligence, and not the plaintiff. In this

connection we refer to the case of *Goodwin vs. The Massachusetts Mutual Life Insurance Co.*, 73 N. Y., 480, and call the attention of the Court to the opinion of Judge Miller, at page 490. We also refer to the case of *Insurance Company vs. Wilkinson*, 13 Wallace, 222.

(*c*) There is a third answer to this claim, and that is, that the defendant having made no objection that the proofs were not delivered within the time required, has waived the right to interpose any such defense to the plaintiff's claim. The correspondence in reference to this matter is found at pages 60 and 61 of the record. In that correspondence the defendant demanded further information, which it was not entitled to, and made no objection whatever that the proofs of death had been received too late. By its silence in this respect and by its demand for further information it led the plaintiff to believe that no such defense would be interposed. The only objection made to the proofs was that they were insufficient. If in point of fact they were sufficient and complied with the requirements of the policy in that regard the defendant is estopped from claiming that they were received too late. We refer again to the case of *Goodwin vs. Insurance Company*, 73 N. Y., where, after a long and elaborate discussion of the subject, the conclusion was arrived at, in the language of Judge Miller:

> "That the defendant having, by making "no objection to the delivery of such proofs "within the time required, and by other "arts, encouraged the plaintiff to present "the same, and failed to return them on "the ground that they were too late, has "ratified the acts of their own agent and "waived any right to interpose any such

"defense to the plaintiff's claim" (73 N. Y., page 496).

The decision in this case was unanimous. Judges Allen, Folger, Andrews and Earle concurring in the result, and putting their concurrence upon the ground that the defendant by its acts in inviting and inducing the plaintiff to make proofs of loss, and by accepting and retaining them without objection, was estopped from objecting that the proofs were not made in due time.

Fifth.

The question whether the plaintiff had been guilty of concealment or fraud in not furnishing defendant with the proofs of facts found by the autopsy and chemical analysis, was properly submitted to the jury. If there was any evidence at all tending to show this, it was a question of fact to be passed upon by that tribunal and not one of law to be determined by the Court.

The motion for a direction of a verdict for the defendant, upon the tenth ground, page 78, and the first request to charge made by the defendant at page 82, were therefore properly denied.

Sixth.

The burden of proof was upon the defendant to prove that deceased had committed suicide. The fact that the contract was in the alternative does not change the general rule in that respect.

Germane vs. Brooklyn Life Insurance Co., 30 Hun (N. Y.), 535.

Seventh.

No error was committed in the charge of the Court that if the jury should find that without knowledge on his part, and by mistake, Edwards had taken poison into his system, which caused his death, the policy would not thereby become void.

The condition of the policy is that it should be void in case the insured shall "die by suicide, whether the act be voluntary or involuntary, felonious or otherwise, or whether the insured be sane or insane at the time of the act." This condition is not violated by death caused by accidental poisoning.

Penfold vs. Universal Life Insurance Company, 85 N. Y. 317.